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THE NEW
POCKET CONVEYANCER,
Or, ATTORNEY'S

Complete Pocket-Book :

Comprising a choice Selection, and great Variety of the most
Valuable and Approved

PRECEDENTS IN CONVEYANCING.

IN WHICH

The MODERN FORMS introduced by Conveyancers of the
highest Eminence now in Practice are particularly at-
tended to; and the Efficacy of them explained.

TO WHICH ARE ALSO ADDED

PRELIMINARY OBSERVATIONS relative to the *Nature*
and *Use* of each particular Species of DEED,

AN INTRODUCTORY DISCOURSE on the Subject of
DEEDS IN GENERAL,

AND

Conclusive Remarks on the ENUREMENT and CONSTRU-
TION of DEEDS.

BY JAMES BARRY BIRD,
OF NEW INN, ESQ.

IN TWO VOLUMES.

VOL. II.

LONDON:

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LINCOLN'S-INN.

1796.

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POCKET CONVEYANCE

OF ATTORNEYS

1800-1801

...and from the fact of the most
...in the end, improved

IMPRINTS IN CONVEYANCING.

The number of persons interested in the
highly important work of the
land of the future is increasing.



1910

BY JAMES HARRY BIRD

IN TWO VOLUMES.

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(See REVOCATION.)

ERRATA.

P. 185. line 3. instead of "lease or release," read
"lease and release."

P. 247. Place an asterisk against *Deed of Partition*.

THE NEW
POCKET CONVEYANCER.

Of LETTERS of ATTORNEY.

LITTLE need be said of this species of instrument.—Its purpose is to authorize a person to do for another that which he cannot conveniently, but is legally entitled to do himself. It is applicable to any sort of transaction which is not in itself unlawful ; it may therefore be to deliver seizin, to execute a deed ; to let or sell an estate ; to receive money, &c. &c. But the authority given must in every case be *strictly* pursued, both in *form* and *extent*, otherwise the validity of the act will be endangered. It must proceed from the party himself, who is interested in the

Of LETTERS OF ATTORNEY.

subject matter intended to be delegated, and not from one who has himself only a bare authority, unless the delegation expressly empowers him to transmit his authority to another, or use it himself, at his discretion.

Letters of attorney are in their nature revocable at the pleasure of the party granting them; this is contrary to the rule which governs other species of deeds under seal, but is permitted on this reason of general convenience and safety, that a man shall not be obliged to entrust another longer than his confidence in him may continue. No particular form is necessary for the withdrawing an authority thus given; for any thing which *implies* a revocation, as a personal interference by the party himself in the matter delegated, or granting a new power to another, will equally vacate the first authority as an *express* annulment.

¶ The compiler is here obliged, though reluctantly, to depart from his accustomed practice of endeavouring to sanction his observations by references to superior authorities than his own, as no treatise, or dissertation, has, to his knowledge, been yet written upon this subject.

A general letter of attorney to receive debts.

KNOW all men by these presents, that I *K. Y.* of ——— Have made, ordained, authorized, constituted and appointed, and by these presents *Do* make, ordain, authorize, constitute, and appoint *L. T.* of ——— my true and lawful attorney, for me and in my name, and to my use (or, *but to the use of him the said L. T.*) to ask, demand, sue for, recover and receive of *G. M.* of ——— all such sum and sums of money, debts and demands whatsoever, which now are due or owing unto me the said *K. Y.* by and from the said *G. M.* and in default of payment thereof, to have, use and take all lawful ways and means in my name or otherwise, for the recovery thereof by attachment, (*distress*) (*re-entry*) or otherwise (*and compound and agree for the same*) and on receipt thereof, acquittances or other sufficient discharges for the same, for me and in my name to make, seal and deliver, and to do all lawful acts and things whatsoever, concerning the premises, as fully in every respect as I myself might or could do if I were personally present, and an attorney or attornies under him for the purposes aforesaid to make and at his pleasure to revoke; hereby ratifying and confirming all and whatsoever my said attorney shall in my name lawfully do or cause to be done in and about the premises, by virtue of these presents. *In witness, &c.*

To receive money on a bond.

— And receive of *M. K.* of — the sum of — due unto me, in and by a certain bond or obligation bearing date the — and upon non-payment thereof to have, use and take all lawful ways and means in my name or otherwise, for recovery of the same by attachment, bill, plaint, arrest or otherwise, and, &c.

** A general letter of attorney to manage estates, and receive rents, debts, &c.*

K*NOW* all men by these presents, that I *P. I.* of — &c. intending in a short time to depart from England and to reside for a certain time in foreign parts, *Have* made, ordained, authorized, constituted, and appointed, and by these presents *Do* make, ordain, authorize, constitute, and appoint *D. T.* of — &c. my true and lawful attorney for me and in my name, and in my place and stead, to enter into, and upon, and take possession of, and to view and survey at his free will and pleasure, *All* or any manors, messuages, farms, lands, tenements, hereditaments, and premises, belonging or in any wise appertaining to me, or wherein I have any estate or interest whatsoever, situate, lying, and being at — &c. or in any other part of the kingdom of Great Britain — And for me, and in my name, to view the state and condition and defects of reparation of all and singular the same premises, and forthwith to repair or give proper notice or directions for repairing the same in

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such a manner as he shall think best and proper for my benefit and interest; and generally to oversee, let, set, manage, and improve the same premises to the best advantage, in such manner as my said attorney in his discretion shall think fit. *And* for that purpose, for me and in my name, and as my act and deed, to make, sign, seal, deliver, and execute any lawful and reasonable lease or leases (not exceeding however the term of five years) to any person or persons, for the best rents that can be reasonably gotten for the same, and under such covenants and agreements as my said attorney shall think fit and most for my benefit; *And also*, for me and in my name to receive and take all and singular the rents, arrears of rent, and profits of all or any of my said manors, messuages, farms, lands, tenements, hereditaments, and premises: and upon payment and receipt of the same, for me and in my name to give proper receipts, acquittances, discharges, and allowances; and upon non-payment of the said rents and arrears of rent, or any part thereof, to enter and distrain, and the distress and distresses then and there found, to take, lead, drive, carry away, and impound, and in a pound to detain and keep, or otherwise dispose of according to due course of law, until my said attorney shall be of such rents and profits duly satisfied and paid. *And also* for me and in my name to ask, demand, sue for, recover, and receive all, or any sum, or sums of money, debts, dues, duties, goods, chattels, and effects of any nature or kind soever, which now are, or at any time or times hereafter during the continuance of these presents, shall accrue, or become due to me; and to pay, apply, and dispose of all or any part of the monies which he shall so receive in the pay-

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ment and discharge of any debts, dues, rents, taxes, and assessments which now are, or at any time or times hereafter, during the continuance of these presents, shall, or may become due, or owing from me, for or in respect, or on account of my said real or personal estate, or otherwise howsoever, and to pay or remit the residue of all such monies as shall be so received by him as aforesaid, after such payments as aforesaid, unto me, my executors, or administrators, or to whom I shall direct or appoint; *And also* for me, and in my name to commence and prosecute any action or actions in any court or courts of law or equity, for recovery of any rent or rents, arrears of rent, or any other sum or sums of money, debt, duty, matter, or thing whatsoever, now or which at any time hereafter during the continuance of these presents, may become due, owing or belonging to me, for or in respect of the premises, or any part thereof, and the same action or actions, suit or suits to prosecute and follow, or to discontinue or leave to arbitration if he shall see cause. *And also* for me and in my name to use, and take all and every or any such lawful ways and means for the recovering, receiving, obtaining, or getting in any manors, messuages, lands, tenements, hereditaments, and premises, rents, sum and sums of money, or other thing whatsoever, which by my said attorney shall be conceived or thought to belong, appertain, be due, owing, or payable to me in any wise howsoever (but to and for my sole and proper use and benefit) as fully and effectually to all intents and purposes as I myself might or could do, use, or take if I were personally present. *And also*, for me and in my name, and on my behalf to compound any debt or debts, sum or sums of

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money, which now is or are, or at any time hereafter, during the continuance of these presents, shall be due, or owing to me; or any other claim or demand whatsoever, which I now or at any time hereafter during the continuance of these presents, shall or may have, or be entitled to, and make and receive all and every such composition or compositions, and upon the receipt thereof, for me, and in my name, to give, sign, seal, and execute all and every such receipts, acquittances, releases, and discharges, as my said attorney shall see fit in that behalf. And generally for me, and in my name to execute and perform all and every other act, deed, and thing needful and expedient in and about the premises, as fully and effectually to all intents and purposes, as I myself could or might do if I were personally present, I the said *P. I.* hereby ratifying, confirming, and allowing, and agreeing to ratify, confirm, and allow, all and whatsoever my said attorney shall lawfully do, or cause to be done in or about the premises. *In witness, &c.*

A letter of attorney by a feme covert (in pursuance of a power reserved to her) to recover rents, and give acquittances in the name of her and her trustee.

KNOW all men by these presents, that *D. D.* wife of *E. D. junior*, Esq. by virtue and in pursuance of a certain power to her in that behalf given or reserved, *Hath* made, ordained, constituted and appointed, and by these presents *Doth* make, ordain, constitute and appoint *F. T. of Amford*, in the county of *Hants*, Gentleman, her true and lawful attor-

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ney, for her and in her name, or in the name of Dr. *Francis Ferne* (her trustee) but to her use, to ask, demand, recover, receive, get in, and collect all and every, or any the rents, arrears of rent, issues and profits, of all and every or any her messuages, lands, tenements, hereditaments, and real estate whatsoever, in the said county of *Hants*, of and from the respective tenants or occupiers thereof; and upon non-payment of the same or any part thereof, in the name of the said *D. D.* and *F. Ferne*, or either of them, as well to enter and distrain, and the distress and distresses then and there found to take, lead, drive, carry away and impound, and in pound to detain and keep, or otherwise to sell and dispose of the same according to law; as also to bring any action or actions for recovery of the same, or any part thereof, as occasion shall be and require; and upon payment of the same or any part thereof, for her the said *D. D.* and in her name, or in the name of the said *F. Ferne*, acquittances and other proper discharges to make and give; *And further*, in the names of the said *D. D.* and *F. F.* or either of them, but to the proper use of the said *D. D.* generally to transact, do and execute all and every other lawful and reasonable act and acts, thing and things, needful and requisite for recovering, receiving, getting in, and collecting the said rents, arrears of rent, issues and profits due or to grow due for the premises or any part thereof, as fully and effectually to all intents and purposes, as she herself, or the said *F. Ferne* could or might do, were they or either of them personally present; she the said *D. D.* hereby ratifying and confirming, and agreeing to ratify and confirm all and whatsoever her said attorney

shall lawfully do or cause to be done in and about the premises by virtue of these presents; and the said *D. D.* doth hereby declare, that these presents and all the power and powers, authority and authorities hereby given or intended to be given to the said *F. T.* as aforesaid, or any of them, shall only continue and be in force during the pleasure of the said *D. D.* and shall be revocable and determinable at her free will and pleasure, and shall cease and determine accordingly on her giving notice to the said *F. T.* of such her intention to cease and determine the same; any thing herein contained to the contrary thereof in any wise notwithstanding. *In witness, &c.*

Letter of attorney from two to one to receive interest of South-Sea annuities.

K*NOW* all men by these presents, that we *D. D.* of the parish of *St. Giles* in the county of *Middlesex*, brewer, and *K. K.* of the parish of *St. James, Clerkenwell*, in the same county, brewer, *Do* make, ordain, constitute and appoint *L. L.* of the parish of *St. Giles*, fadler, our true and lawful attorney, for us and in our names from time to time to ask, demand and receive all dividends, interest and produce now due or hereafter to grow due or payable to us, for or upon 3000*l.* *South-Sea* annuity stock, lately transferred to us, and standing in our names in the books of the *South-Sea* Company; and also for us and in our names to give receipts and discharges for all such dividends, interest and produce of the aforesaid 3000*l.* annuity stock, on payment thereof, as the same shall from time to time

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be received by him the said *L. L.* hereby ratifying and confirming whatsoever our said attorney shall lawfully do or cause to be done in or about the premises. *In witness, &c.*

A letter of attorney by two surviving mortgagees (one being dead) to receive the interest and give acquittances.

The mortgage to three recited.

TO all people to whom these presents shall come, we *I. I.* the elder, of — &c. Esquire, and *K. K.* of — &c. clerk, fend greeting. Whereas *L. L.* of the county of *Dorset*, Esquire, by indentures of lease and release, the lease bearing date the — &c. and made between *L. L.* of *Enford* in the county of *Dorset*, Esquire, brother and heir of *E. E.* late of *Ringwood* in the county of *Hants*, Esquire, deceased, and *Jane* wife of the said *L. L.* of the first part, *L. M.* of *London*, merchant, of the second part, and the said *I. I.* the elder, Esquire, *N. O.* of the parish of *St. Giles in the Fields* in the county of *Middlesex*, Esquire, and the said *K. K.* of the third part, did grant, bargain, sell, release and confirm several lands, tenements and hereditaments in the said county of *Dorset*, and also several messuages, dwelling-houses or tenements, situate, lying and being in the hamlet, village, parish, precinct or liberty of *St. Martin in the Fields* in the county of *Middlesex*, in or near unto a certain street or place, called *Saint Martin's Lane*, unto the said *I. I. N. O.* and *K. K.* and their heirs for ever; subject nevertheless to the provisos and agreements therein contained, conditioned for the payment of the principal sum of 4000*l.* and interest at 4*l.* 10*s.* per cent. as by the said indentures

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II

of lease and release may more fully appear.

And whereas the said *N. O.* is since deceased ; *And one of*
Now know ye, that we the said *I. I.* and *K. K.* the mortga-
 being the survivors of the said *N. O.* for divers *gees dead.*
 good causes and considerations us hereunto *The power*
 moving, *Have* made, ordained, constituted *of attorney*
 and appointed, and by these presents *Do* make, *by the sur-*
 ordain, constitute and appoint *P. B.* of *Lin-* *viving mort*
coln's-Inn, Esquire, our true and lawful attor- *gagees to*
 ney, for us and in our name (but to his own *receive the*
 use) to ask, demand and receive of and from *interest and*
 the said *L. L.* his heirs and assigns, all and *give acquit-*
 every such sum and sums of money, as now is *ances, &c.*
 to us, for and on account of interest for the
 said principal sum of 4000*l.* And upon our
 said attorney's receipt of all, every or any such
 monies, We do hereby impower and authorize
 our said attorney, for us and in our names,
 to give acquittances or other discharges for
 the same, in part or in full as the case shall
 require, and whatsoever our said attorney
 shall lawfully do or cause to be done in and
 about the premises, we hereby do and at all
 times hereafter shall and will ratify, confirm
 and allow, to all intents and purposes, *In*
witness, &c.

Letter of attorney to receive a legacy.

K*NOW* all men by these presents, that
Whereas *A. K.* late of ——— by her last
 will and testament bearing date ——— did
 give and bequeath unto me *M. G.* of ———
 500*l.* to be paid unto me upon my sealing and
 delivering a general release to the executors
 of the said *A. K.* and made and constituted

K. B. of ——— her executor, and shortly after died: *And whereas* the said *K. B.* hath proved the said will, and the said *M. G.* hath sealed such general release to the said *K. B.* as by the said will is directed, and left the same in the hands of her attornies herein after named, to be delivered to the said *K. B.* on payment of the said 500*l.* *Now know ye,* that I the said *M. G.* *Have* made, ordained, constituted and appointed, and by these presents *Do* make, ordain, constitute and appoint *K. E.* of ——— and *R. S.* of ——— my true and lawful attornies, jointly and either of them singly, for me and in my name, and to my use to ask, demand, and receive of and from the said *K. B.* the said legacy of 500*l.* so given and bequeathed to me the said *M. G.* by the said *A. K.* in her said will as aforesaid; and upon receipt thereof by my said attornies or either of them, to deliver the said general release so sealed as aforesaid, or to give such other discharge as shall be sufficient; I hereby ratifying, allowing and confirming all and whatsoever my said attornies jointly or separately shall lawfully do in the premises. *In witness, &c.*

To demand rent, and on default of payment to re-enter according to a proviso for such re-entry in a lease.

——— *To demand and receive of and from* *K. L.* of ——— on the twenty-eighth day next after the feast of the Annunciation of the Blessed Virgin *Mary* next ensuing, at ——— commonly called or known by the name of ——— situate, &c. ——— *l.* of lawful money

of *Great Britain*, which will become due unto me the said *F.* from the said *K. L.* at the said feast of the Annunciation of the Blessed Virgin *Mary* next coming; for one half year's rent for the said messuage, lands and tenements, with the appurtenances thereto belonging, which by an indenture of lease bearing date &c. were by the said *A. B.* demised unto the said *K. L.* for a certain term of years yet unexpired; *And* for default of payment of the said — *I.* I give and grant unto my said attorney full power and authority to enter into and upon the said messuage and premises, by the before-mentioned indenture of lease demised, and thereof for me and in my name, stead and place, to take possession, to the intent that the indenture of lease may become void, according to a certain proviso in the said indenture contained; *And further* to do and perform all things requisite and necessary to be done in and about the execution of these presents, according to the true intent and meaning thereof. *In witness, &c.*

To take possession of lands newly purchased.

—— To take and receive peaceable and quiet possession and seisin of and in all that messuage or tenement, and all and singular the lands, &c. with the appurtenances, situate, &c. lately bargained and sold by *F. J.* of — unto me the said *R. C.* And the same possession so had and taken, to detain and keep to the only use and behoof of me the said *R. C.* my heirs and assigns, according to the tenor and true meaning of the indenture, whereby the said premises are conveyed unto me: And I do hereby ratify, allow and con-

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firm all and whatsoever my said attorney shall do or cause to be done in or about the premises by virtue of these presents. *In witness, &c.*

To sell an estate.

—— To grant, bargain and sell *All* that, &c. (*the parcels*;) and also all my estate, right, title, interest, claim and demand whatsoever of, in and unto the said premises and every part and parcel thereof, unto *C. D.* of, —— his heirs and assigns for ever; and also for me and in my name, place and stead, and as my proper act and deed to execute, seal and deliver such conveyances and assurances of the said premises unto the said *C. D.* his heirs and assigns for ever, as shall be needful and requisite for the doing thereof, and as shall be to the good liking and approbation of the counsel learned in the law of the said *C. D.* his heirs and assigns, giving and by these presents granting unto my said attorney full power and absolute authority to do, execute and perform any act or acts, thing or things whatsoever, that shall be needful and necessary to be done, touching or concerning in any wise the premises, or the conveying or assuring thereof to the person and uses aforesaid, in as full and ample manner to all intents and purposes, as I the said *A. B.* might or could do if I was then and there personally present; and also ratifying, confirming and allowing all and whatsoever acts and things my said attorney shall do, or cause to be done, by virtue and according to the true intent and meaning of these presents.

In witness, &c.

To sell South-Sea stock.

——— And to my use to sell, assign and transfer ——— pounds, *South-Sea* stock, to which I am entitled, as by the books of the company appears, or any part thereof, to such person or persons as shall buy and accept the same, at and for such price, and in such manner as my said attorney shall think fit, and to receive the consideration money for the same, and upon receipt thereof, acquittances and discharges for me and in my name, or otherwise, to make, sign and give; hereby ratifying, &c.

* *A Letter of Attorney to vote in the choice of assignees, receive dividends, and sign certificate.*

KNOW all men by these presents that we *D. E. of &c. F. G. of &c. H. I. of &c. and K. L. of &c. creditors of M. N. of &c.* against whom a commission of bankrupt under the Great Seal of *Great Britain* hath been awarded and issued, *Have* made, ordained, authorized, constituted, and appointed, and by these presents *Do* make, ordain, authorize, constitute and appoint *O. P. of &c.* our true and lawful attorney, for us, and in our names, places, and steads, respectively to appear before the commissioners in and by the said commission named and authorized, or the major part of them, at ——— &c. or elsewhere, at the days and times appointed in the *London Gazette*, for the choice of assignees of the estate and effects of the said *M. N.* And then and there for us, and in our names severally to vote in the choice of one or more assignee or assignees of the said bankrupt's estate and effects, as

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our said attorney, or the commissioners and creditors then present shall think most fit and proper for the better management, getting in, and recovering and securing of the said bankrupt's estate and effects. *And also* for us, and in our names, places, and steads, and to and for the sole and proper use and benefit of us respectively to ask, demand, sue for, recover, and receive of and from the assignee or assignees of the said bankrupt's estate and effects, our parts and shares respectively of and in all such dividend or dividends, as the said commissioners or the major part of them shall from time to time, and at all times hereafter, order to be made among the creditors of the said *M. N.* who shall have come in and sought relief under the said commission, and which shall be due, owing, and payable to them for or on account of the debts proved by them under the said commission; and on receipt thereof for us, and in our names respectively, and as our several acts and deeds to sign, seal, execute, and deliver all and every such good and sufficient receipts, acquittances, releases, and discharges to the said assignee or assignees as shall be lawful and fit to be done. *And also* for us, and in our respective names, and as our acts and deeds, to sign the said bankrupt's certificate, and our consent to the allowance thereof; *And further*, to act, do, and perform all and whatsoever shall be needful and requisite to be done in and about or concerning the said debts so due and owing to us from the said bankrupt, or his said estate and effects, or relating to the said bankrupt, or commission so issued as aforesaid, as we might or could do were we personally present, hereby ratifying, confirming, and allowing and agreeing to ratify, confirm, and allow all and whatsoever

our said attorney shall lawfully do, or cause to be done for us, by virtue of these presents, and of the power and authority hereby to him by us given. *In witness, &c.*

To surrender copyhold lands to the use of a will.

BY these presents I S. C. of ——— son and heir of J. C. do make, ordain and appoint T. C. of ——— and J. L. of ——— my true and lawful attornies jointly and severally for me and in my name, stead and place, to surrender into the hands of the lord of the manor of N. in the county of U. according to the custom of the said manor, all and singular the messuages, lands, tenements and hereditaments, with the appurtenances of me the said S. C. within the manor aforesaid, and all such messuages, lands, tenements, and hereditaments, with the appurtenances, holden by copy of court roll of the manor aforesaid, whereof the said J. C. my father lately died seized, to the use and behoof of such person and persons, and for such estate and estates, as I the said S. C. by my last will and testament in writing shall direct and appoint. *In witness, &c.*

*Of LETTERS of LICENCE
and COMPOSITION.*

THESE instruments though distinguished by the above titles, as declaratory of their address and purport, are in *effect* no other than *agreements* between the debtor and his creditors, relative to the subject matter of the contract; and are, in respect to their legal operation, entirely referable to that head.

A letter of licence from creditors to a debtor.

TO all people to whom these presents shall come, we who have hereunto subscribed our names and affixed our seals, creditors of *M. B.* of, &c. send greeting. *Whereas* the said *M. B.* on the day of the date hereof, is indebted unto us the several creditors hereunder named in divers sums of money, which at present he is not able to pay or satisfy without respite and time to be given him for the payment thereof: *Know ye therefore*, that we the said several creditors, and each and every of us, *Have* given

and granted, and by virtue of these our present letters, *Do* give and grant unto the said *M. B.* full and free liberty, licence, power and authority to go about, attend, follow and negotiate any affairs, business, matters and things whatsoever, to or at any place or places whatsoever, without any let, suit, trouble, arrest, attachment, or other impediment, to be offered or done unto him the said *M. B.* his wares, goods, monies, or other merchandize whatsoever, or any of them, or any part of them, by us or by any of us, or by the heirs, executors, administrators, partners or assigns of us or any of us, or by our or any of our means and procurement to be sought, attempted or procured to be done, for and during ———— (*so long*) next and immediately ensuing the day of the date hereof: *And further*, we the said creditors hereunder subscribed *Do*, and each of us *Doth* covenant and grant for ourselves, our heirs, executors, administrators and assigns respectively, and not jointly one for another, nor for the heirs, executors, administrators or assigns of one another, to and with the said *M. B.* that we, or each or any of us, our heirs, executors, administrators and assigns, or any of them, shall not nor will during the time aforesaid sue, arrest, attach or prosecute the said *M. B.* for or upon account of our respective debts or any part thereof, or any of them; *And* that if any hurt, trouble, wrong, damage or hindrance be done unto the said *M. B.* either in body, goods or chattels, or any of them, within the aforesaid term of ———— next ensuing the date hereof, by us or any of us the said creditors, or by any person or persons, by or through the procurement, consent or knowledge of us, contrary to the true intent and meaning of these presents; that

LETTERS OF LICENCE, &c.

then the said *M. B.* by virtue hereof shall be discharged and acquitted for ever against such of us the said creditors, his and their heirs, executors, administrators or assigns, by whom and by whose will, means or procurement, he shall be arrested, attached, imprisoned, grieved or damnified, of all manner of actions, suits, quarrels, dues, debts, charges, sum or sums of money, claims and demands whatsoever, from the beginning of the world to the day of the date hereof. *In witness, &c.*

Letter of composition for debts.

TO all, &c. We *J. F.* and *F. J.* creditors of *R. C.* and *C. R.* send greeting. *Whereas* the said *R. C.* and *C. R.* are and do stand jointly indebted unto us the said creditors in divers sums of money, which they are willing to satisfy and pay as far as they are able: *Now know ye,* That we the said creditors who have hereto subscribed our names and affixed our seals, finding they the said *R. C.* and *C. R.* are by losses and otherwise disabled to pay our full debts, *Do* severally and respectively agree and bind ourselves, our heirs, &c. to the said *R. C.* and *C. R.* by these presents, to accept and take of them the said *R.* and *C.* their, &c. after the rate of — in the pound, in full satisfaction of all such debts and sums of money, as they do jointly owe to us and every of us respectively, the same to be paid at four equal payments, the first payment, &c. so as the said *R.* and *C.* (for the more sure and better payment of the several sums of money aforesaid, in recompence and satisfaction of our and every of our several debts, after the rate of — in the pound as aforesaid) their executors

or administrators, do before the — become jointly and severally bound, with sufficient sureties, unto us and every of us respectively, by obligation and with double penalties in due form of law to be made, sealed and delivered to us and each of us, or to our and each of our uses, by the appointments of us and each of us. *Provided always* That neither these presents, nor any thing herein contained, shall bind us or either or any of us, who have hereunto subscribed our names and put our seals, until all and every of the creditors aforesaid shall have sealed and subscribed the same, on or before the — next ensuing. *In witness, &c.*

LIMITATIONS,

See USES.

Of MEMORIALS.

PREVIOUS to the forms we shall afterwards introduce of Memorials, it will be proper to give some short account of the several statutes which require the *enrollment* of deeds of which the *memorial* is only a minute or memorandum.

By 27 Hen. 8. c. 16. it is provided, that no land shall pass by *bargain and sale*, unless such bargain and sale be enrolled in one of the courts at Westminster, or within the county where the lands lie, such enrollment to be made within six months (of 28 days each) after the date of the indenture.

And by 7 Ann. c. 20. the like is required of *all deeds, wills, and conveyances* affecting any honors, manors, lands, tenements, or hereditaments in the county of *Middlesex*; and by 8 Geo. 2. c. 6. this provision is extended to *Yorkshire*. And by 3 Geo. 1. c. 18. it is further extended, in respect of *papists*, to every county in England.

And by 17 Geo. 3. c. 26. a memorial is required to be enrolled in the court of *chancery*, of all deeds, bonds, or other instruments

for granting *life-annuities*, (except annuities by will, *marriage settlement*, or for the *advancement of a child*, and annuities secured on *fee-simple* or *fee-tail lands* of equal value, or on stocks of greater value actually transferred; or *voluntary annuities*, or annuities granted by *corporations*, by *parliament*, or lastly, annuities under 10*l.* per annum) which memorial is to contain the date, names of the parties, and witnesses.

The acts require only the dates, persons names, additions, parcels, witnesses names, and their additions and places of abode, to be contained in the memorial; but it is usual to make a short recital of the transaction.

Where there are more deeds than one to perfect a conveyance or security, the lands, &c. need not be set forth in each memorial; but being described in one of them, may be referred to by the rest.

These memorials are to be on vellum or parchment, and to be signed and sealed in the common form by one of the grantors or grantees, his or their executors, administrators, guardians or trustees, and attested by two witnesses; and one of the witnesses to the deed must be a witness to the memorial, who is to make oath to the due execution of both before the register, and also produce the deed, grant or will at the same time.

Of MEMORIALS.

The reasons upon which these acts proceed, (though their policy has been doubted, see 2 *Black. Com.* 343) are to guard against "fraudulent charges and incumbrances, since the disuse of the old Saxon custom of transacting all conveyances at the county court, and entering a memorial thereof in the chartulary or leger-book of some adjacent monastery." *Ib.* and *Co. Lit.* 237.

Of a lease for a year.

A memorial to be registered, pursuant to an act of parliament made in the seventh year of the reign of her late Majesty Queen *Anne*, intitled, an act for the public registering of deeds, conveyances, wills and other incumbrances which shall be made, or that may affect any honours, manors, lands, tenements, or hereditaments, within the county of *Middlesex*, after the nine and twentieth day of *September*, one thousand seven hundred and nine.

AN indenture bearing date, &c. and in the year of our Lord, &c. made between, &c. of the one part, and, &c. of the other part, purporting to be a lease for a year, to vest the possession of and concerning *All* that messuage or tenement, &c. and all buildings, yards, gardens, easements, commodities and appurtenances whatsoever, to the said premises be-

longing or in any wise appertaining or accepted, reputed or known, as part, parcel or member thereof, and the reversion and reversions, remainder and remainders, rents, issues and profits of all and singular the said premises; which said indenture of lease was duly executed, and is witnessed by T. A. of &c. Esquire, and J. W. of &c. Gent. And the same is hereby required to be registered pursuant to the said act, by me the said J. A. the grantor; As witness my hand and seal the ——— day of ——— 1796.

Of a release.

Memorial to be registered (*as before.*)

AN indenture dated, &c. made, &c. of the one part, and, &c. of the other part, purporting to be a release of all and singular the premises mentioned in a certain lease for a year bearing date the day next before the day of the date of the said release, and made between, &c. A memorial of which is registered at the same time herewith: which indenture of release is witnessed by ——— and ——— and is hereby required to be registered by me the said ——— the grantor in the said indenture of lease; *As witness* my hand and seal, &c.

Memorial of a conveyance in fee by lease and release.

A Memorial to be registered, &c. of

INdentures of lease and release, bearing date respectively, the ——— and ——— days of ——— in the year of our Lord 17 ———, the

MEMORIALS.

lease between *A. B.* of ———, the release made between, &c. (describe the parties as in the deed), whereby the said *A. B.* in consideration of the sum of — of lawful money of *Great Britain* to him in hand paid by the said — did grant, bargain, sell, and release unto the said — his heirs, &c. All that, &c. (insert a description of the parcels, or make a reference to some deed wherein the same premises are described) to hold to the said — his heirs and assigns for ever, subject, &c. (If the premises are subject to any incumbrance or outgoings, insert them here), which said indenture of lease is witnessed by — of — and — of — and which said indenture of release is witnessed by — of — and — of — and is hereby required to be registered by the said — as witness his hand and seal.

Note. When the conveyance is accompanied by a bargain and sale, the memorial of the bargain and sale is usually engrossed upon the same skin with the lease and release, and where there is an assignment of a term, it follows the bargain and sale, one description of the premises being sufficient to register all the four deeds, as in the following precedent.

Memorial of an assignment of a term to attend the inheritance of the same premises, to follow the lease and release.

A Memorial to be registered, &c. of

AN indenture bearing date the — day of — in the year of our Lord 17 — made between, &c. (insert all the

MEMORIALS.

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parties to the deeds before mentioned) purporting to be an assignment of a term to attend the inheritance of and concerning the same premises contained in the memorial of an indenture of lease for one year, made between, &c. (insert the parties to the lease for a year), a memorial whereof is registered at the same time herewith, which said indenture is witnessed by _____ of _____ and _____ of _____ and is hereby required to be registered by the said _____ as witness his hand and seal, the, &c.

Memorial of a bargain and sale to be inrolled, which follows the lease and release.

A Memorial to be registered, &c. of

AN indenture bearing date the _____ day of _____ in the year of our Lord 17— made between the said *M.* of _____ of the one part, and *Q. R.* of _____ of the other part, purporting to be a deed of bargain and sale to be inrolled of and concerning the same premises mentioned in the indenture of bargain and sale, dated, — &c. and made between the said *A. B.* of the one part, and the said *Q. R.* of the other part: a memorial whereof is registered at the same time herewith, (or as the case may be) which indenture of bargain and sale is witnessed by *J. M.* of _____ and *W. J.* _____ and is hereby required to be registered by me the said *A. B.* the grantor in the said deed of bargain and sale mentioned, as witness my hand and seal, this _____ day of _____ 17—

Memorial of lease for years.

A Memorial to be registered, &c, of

AN indenture of lease bearing date the _____ made between *W. L.* of _____ of the one part, and *I. K.* of the other part, whereby the said *W. L.* for the considerations therein mentioned, did demise to the said *I. K.* *All that*, &c. situate, lying and being _____ abutting _____ (*set out the parcels verbatim, till you come to the general words, which you omit*), and now in the tenure or occupation of the said *I. K.* *To hold* to the said *I. K.* his executors, &c. from the _____ day of _____ for _____ the term of _____ years, at the yearly rent of _____ of good and lawful money of *Great Britain*; which said indenture of lease is witnessed by *L. M.* of _____ in the county of _____ gentleman, *N. O.* of _____ &c. and is hereby required to be registered pursuant to the said act, by the said *I. K.* the lessee in the said indenture; as witness his hand and seal, this _____ day of _____ in the year of our Lord 1795.

Memorial of a mortgage for years.

A Memorial to be registered, &c. of

AN indenture of mortgage, dated the _____ made between *W. G.* of _____ of the one part, and *M. W.* of the other part, whereby the said *W. G.* for and in consideration of the sum of _____ demised unto the said *M. W.* *All that* _____ situate and being in _____

and called or known by the name of ———
 now in the tenure of ——— *To hold* unto
 the said *M. W.* for the term of ——— years;
subject nevertheless to a proviso, that the same
 shall be void on payment of the sum of ———
 and lawful interest for the same, on the ———
 day of ———; which said indenture of mortgage
 is witnessed by ——— and ——— and is hereby
 required to be registered pursuant to the said
 act of parliament, by me the said *W. G.* the
 grantor in the said deed, as witness, &c.

Memorial of an indorsement.

A Memorial, &c. of

AN *Indorsement* dated the ——— day of ———
 ——— made from *K. E.* of ——— and
M. G. of ——— on the back of a mortgage
 deed, dated the ——— and made between the
 said *K. E.* of the one part, and *M. G.* of the
 other part, of and concerning *all that*, &c.
 situate and being in ——— now in the tenure
 or occupation of *J. D.* which said indorsement
 is witnessed by *L. E.* of ——— and *K. W.* of ———
 and is hereby required to be registered by me
 the said *K. E.* the grantor. *As witness*, &c.

Memorial of a will.

A Memorial to be registered, &c. of

THE probate of the last will and testament
 of, &c. (as in the will) bearing date the
 ——— day of ——— of and concerning *all that*
 messuage and tenement in ——— late in the
 tenure and occupation of *G. L.* (*or if the words*

MEMORIALS.

are general say) of and concerning all the lands, tenements, or hereditaments, which the said *L. M.* died possessed of in the county of *Middlesex*, which said will is witnessed by *M. S.* of — *T. W.* of — and *E. F.* of — This memorial therefore is desired to be registered, pursuant to the aforesaid act, by me *E. L.* one of the devisees in the said will mentioned. As witness my hand and seal this — day of — in the year of our Lord 17—

Note. This must be signed and sealed by some or one of the devisees, his or their heirs, executors, administrators, guardians, or trustees, one of whom swears to the execution of the memorial.

Memorial of the grant of an annuity.

A Memorial to be registered, &c. of

AN indenture bearing date the, &c. made between *A. B.* of — of the first part, *C. D.* of — of the second part, and *E. F.* of — of the third part, whereby the said *A. B.* in consideration of — paid to him by the said *C. D.* did charge and make chargeable all that, &c. (as in the deed) with the payment of an annuity or yearly sum of £ — of lawful money of *Great Britain*, to the said *C. D.* during the term of the natural life of the said *E. F.* payable quarterly as therein mentioned, which said indenture is witnessed by *M. S.* of — and *L. G.* of — and is hereby required to be registered by the said *A. B.* As witness his hand and seal, this, &c.

*A memorial of an assignment to be registered
with a lease.*

A Memorial to be registered, &c. of

AN indenture dated the — day of — made between the said *C. D.* of the one part, and the said *E. F.* of the other, whereby the said *C. D.* in consideration of £ — did assign to the said *E. F.* all and singular the premises mentioned in the above memorial, (*of the lease*) to hold to the said *E. F.* his executors, administrators, &c. for the remainder of the term by the abovementioned indenture of lease demised, subject to the rent and covenants in the said indenture of lease, contained (if the assignment is by way of mortgage then) subject to redemption upon payment by the said *C. D.* to the said *E. F.* of the said sum of — with legal interest for the same, which said indenture is witnessed by the abovenamed — and — and is hereby required to be registered by the said *C. D.* As witness his hand and seal, this, &c.

*Memorial of an assignment of a lease which
has been registered before.*

A Memorial to be registered of

AN indenture dated the — day of — and made between *I. M.* of — of the one part, and *C. H.* of — of the other part, whereby the said *I. M.* in consideration of £ — of lawful money of *Great Britain*, did assign to the said *C. H.* all and singular the premises, situate in &c. mentioned and described in an indenture of lease

MEMORIALS.

bearing date the _____ day of _____ and made between _____ of _____ of the one part, and _____ of _____ of the other part, a memorial whereof was registered on the _____ day of _____ in *A.* to hold to the said *C. H. &c.* (as in last memorial)

A memorial of a deed-poll, being a further charge by way of mortgage.

A Memorial to be registered of

A Deed-poll dated the _____ day of _____ indorsed upon an indenture dated the _____ day of _____ made between *I. G.* of &c. of the one part, and *M. G.* of _____ of the other part, a memorial whereof was registered on the _____ day of _____ *C.* by which said deed-poll the said *I. G.* did charge all and singular the premises, situate in _____ in the said deed mentioned, with the payment of the further sum of _____ to the said *M. G.* his executors, &c. with lawful interest as therein mentioned, which said deed-poll is witnessed by _____ of _____ and _____ of _____ and is hereby required to be registered by the said *I. G.* Witness his hand and seal this, &c.

Of MORTGAGES.

A MORTGAGE is “where one who has borrowed a sum of money of another, grants to the lender an estate, &c. to hold till repayment of the money borrowed, and as a pledge or security for such re-payment.” The usual condition of the pledge is, that if the mortgagor repay to the mortgagee the sum lent, on a certain day mentioned in the deed, the mortgagee shall re-convey the estate to the mortgagor, the legal consequence of which is, that unless the money be paid on the day specified, the estate becomes absolutely and unconditionally vested in the mortgagee.

Immediately on the execution of the deed, the mortgagee is entitled to take possession of the estate; but as he is liable to be dispossessed on payment of the money by the borrower on the day limited in the deed, it is customary in practice for the parties to agree that the mortgagor shall continue in possession till failure of the condition, when he may, (though he seldom does) enter upon the lands, &c. as his own rightful estate, and which is at *law* absolute and indefeasible. But as it frequently happens, that a necessitous borrower is induced

Of MORTGAGES.

to pledge lands, &c. of considerable value for the loan of a small sum of money, Courts of Equity have long assumed the jurisdiction of compelling the mortgagee to restore the estate on being tendered within a reasonable time his principal, interest, and expences. The time, which, according to the general run of cases on this subject has been deemed reasonable, is twenty years, after which, a court of equity will seldom interfere. And by 4 & 5 *Wil. & Mar.* " if a person mortgages his estate without previously informing the mortgagee in writing, of any prior mortgage, or incumbrance, which he may have voluntarily brought upon the estate, the mortgagee shall hold the estate as an *absolute* purchaser, free from the equity of redemption of the mortgagor. "

A mortgage may be either in fee, or for a term of years, but the latter is now most generally adopted, in order that in case of the mortgagee's death, the estate may vest in his personal representatives, who, in either case, will be entitled to receive the mortgage money; and a very long term of years, is evidently, when the estate is of sufficient value, as good a security as the fee itself.

See more relative to the extensive head of *Mortgages*, 3 *Wood Conv.* 334. *Lil. Conv.* 415.

2 Black. Com. 157. Pow. Mortg. passim. and
Co. Lit. 208. (a)

**A mortgage in fee to secure £—— and interest, with covenant to levy a fine to bar dower.*

THIS indenture made &c. between *A. B.* of, &c. and *C.* his wife, of the one part, and *E. F.* of, &c. of the other part, *Witnisseth*, that for and in consideration of the sum of —— of lawful money of *Great Britain*, to the said *A. B.* well and truly paid by the said *E. F.* at or before the sealing and delivery of these presents, the receipt whereof he the said *A. B.* doth hereby acknowledge, and thereof, and therefrom, and from every part thereof doth acquit, release, exonerate, and for ever discharge the said *E. F.* his heirs, executors, administrators, and assigns, and every of them by these presents; He the said *A. B.* *Hath* granted, bargained, sold, aliened, released, and confirmed, and by these presents *Doth* grant, bargain, sell, alien, release, and confirm unto the said *E. F.* (in his actual possession now being, by virtue of a bargain and sale for one whole year to him thereof made by the said *A. B.* by indenture, bearing date the day next before the day of the date of these presents, and by force of the statute made for transferring uses into possession) and to his heirs *All*, &c. and all ways, waters, watercourses, easements, profits, pri-

vileges, commodities, advantages, emoluments, hereditaments and appurtenances whatsoever, to the said messuages, lands, tenements, hereditaments, and premises belonging or in any wise appertaining, or therewith or with any part or parcel thereof, usually held, used, occupied or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member thereof, or of any part thereof. And the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits thereof, and of every part and parcel thereof; and all the estate, right, title, interest, trust, property, claim and demand whatsoever, both at law and in equity of him the said *A. B.* of, in, to, or out of the same premises, every or any part or parcel thereof. And all deeds, evidences, and writings whatsoever, in the custody or power of the said *A. B.* which concern or relate to the said premises hereby granted and released, or any part or parcel thereof, solely and alone, and true and attested copies of all such other deeds, evidences and writings in the custody or power of the said *A. B.* which concern or relate to the same premises, or any part or parcel thereof jointly, with any other lands, tenements, or hereditaments, such copies to be transcribed and taken at the costs and charges of the said *A. B.* *To have and to hold* the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereby granted and released, or mentioned and intended so to be, and every part or parcel thereof, with their and every of their appurtenances unto the said *E. F.* his heirs and assigns, *To the only proper use and behoof* of the said *E. F.* his heirs and assigns for ever, subject nevertheless to such proviso or con-

dition for redemption of the said premises as hereinafter is mentioned and contained. And for the better and more effectually securing the payment of the said sum of £—— together with lawful interest for the same unto the said *E. F.* his executors, administrators, and assigns, in manner hereafter mentioned, and for extinguishing the dower and title to dower of the said *C.* the wife of the said *A. B.* of, in, and to the said messuages, lands, hereditaments and premises so granted and released; and for settling, conveying, and assuring the same, To and for the several uses, estates, intents and purposes hereinafter limited and declared of and concerning the same, he the said *A. B.* doth hereby for himself, his heirs, executors, and administrators, and for the said *C.* his wife, covenant, promise, and grant, and she the said *C.* doth consent and agree to and with the said *E. F.* his heirs and assigns, that they the said *A. B.* and *C.* his wife shall and will at the costs and charges of him the said *A. B.* in Hilary Term now next, or some other subsequent term, acknowledge and levy in due form of law in his Majesty's Court of Common Pleas at Westminster, before the justices of the same Court, unto the said *E. F.* and his heirs one fine *sur conuzance de droit come ceo*, &c. with proclamations to be thereupon had according to the statute in that case made and provided, and according to the usual course of fines with proclamations for assurance of messuages, lands, tenements, and hereditaments in the said court, of all and singular the hereinbefore mentioned and intended to be hereby granted and released messuages, lands, tenements, hereditaments, and premises, by such apt and fit names, descriptions, quantities, and qualities of land,

Covenant
to levy a
fine to bar
dower.

Proviso for
redemption

and other particulars ; and in such manner and form as shall be advised and be thought fit and proper for that purpose. *And* it is hereby declared and agreed by and between all the said parties to these presents, that the said fine so as aforesaid, or in any other manner to be had and levied, and all and every other fine and fines, and other assurances in the law whatsoever, already had, made, levied, suffered or executed, or which at any time hereafter shall be had, made, levied, suffered, or executed, of the hereby granted and released premises, by or between the said parties to these presents, or any of them, or whereunto they or any of them shall be parties or privies, as, for, and concerning the same premises, *shall be and enure*, and shall be adjudged, deemed, construed, and taken to be, and enure, and are hereby declared and agreed by and between all the said parties to these presents, to be and enure *To the use and behoof* of the said *E. F.* his heirs and assigns for ever, without impeachment of or for any manner of waste, *subject nevertheless* to the proviso or condition next herein after mentioned, that is to say, *Provided always*, nevertheless, and these presents are upon this express condition, and it is the true intent and meaning hereof, and of the parties hereunto, that if the said *A. B.* his heirs, executors, administrators, or assigns, or some or one of them shall and do well and truly pay, or cause to be paid unto the said *E. F.* his executors, administrators, or assigns, the full and just sum of £ — of lawful money of *Great Britain*, with interest for the same at the rate of 5*l.* for every one hundred pounds by the year, on the — day of — next ensuing the date hereof, without any deduction or abatement whatso-

ever, for or by reason of any taxes, charges, assessments, payments, impositions, or other matter, cause, or thing whatsoever, already taxed, charged, assessed, or imposed upon, or hereafter to be taxed, charged, assessed, or imposed upon the said premises, or any part thereof, or upon the said principal sum of — *l.* or the interest thereof, or upon the said *E. F.* his heirs, executors, administrators, or assigns, or any of them, for or in respect thereof by authority of Parliament, or otherwise howsoever, then and in such case the said *E. F.* his heirs, executors, administrators, or assigns, shall and will at any time, or times after such payment being made as aforesaid, upon the request and at the costs and charges in the law of the said *A. B.* his heirs, executors, administrators or assigns, re-convey, and re-assure all and singular the said hereditaments and premises, hereby granted and released, with their and every of their appurtenances, unto the said *A. B.* his heirs and assigns for ever, or to such person or persons, and to, for, and upon such estate and estates, uses, trusts, intents and purposes as he the said *A. B.* his heirs or assigns, shall in writing for that purpose, under his or their hands and seals, direct or appoint, free from all incumbrances whatsoever to be made, done, or committed by the said *E. F.* his heirs, executors, or administrators, or by any other person or persons whomsoever, lawfully claiming, or to claim from, by, or under him, them, or any of them, any thing herein contained to the contrary thereof in any wise notwithstanding, so as for the doing thereof the said *E. F.* his heirs, executors, administrators, or assigns, be not compelled or compellable to go or travel from his or their then respective places of

Usual
Covenants

abode ; and then, and from thenceforth, the use and estate hereinbefore limited to the said *E. F.* and his heirs, of and in the said premises, shall cease, determine, and be utterly void to all intents and purposes ; and all and singular the premises herein before granted and released to the said *E. F.* his heirs and assigns, and the fine hereby covenanted to be levied as aforesaid ; and all other fines and assurances, as, for, and concerning the said premises shall be and enure *To the use and behoof* of such person and persons, and to and for such estate and estates, uses, trusts, intents and purposes, as he the said *A. B.* shall by any deed or writing, or by his last will and testament to be by him duly executed, declare, limit, or appoint ; and for want of and until such declaration, direction, limitation, or appointment, *To the use and behoof* of the said *A. B.* his heirs and assigns for ever, and to and for no other use, trust, estate, intent or purpose whatsoever ; *And* the said *A. B.* for himself, his heirs, executors and administrators, and for every of them, doth covenant, promise, grant, and agree to and with the said *E. F.* his executors, administrators, and assigns, by these presents, in manner following : that is to say, that he the said *A. B.* his heirs, executors, or administrators, or some or one of them, shall, and will well and truly pay, or cause to be paid unto the said *E. F.* his executors, administrators, or assigns, the said sum of £——with interest for the same at the rate aforesaid, on the ——day of——next ensuing the date hereof, without any deduction or abatement whatsoever, according to the purport, true intent and meaning of these presents. *And also*, that he the said *A. B.* (for and notwithstanding any act, deed, matter, or

thing whatsoever, by him the said *A. B.* done, committed, or executed, or wittingly or willingly suffered to the contrary), now is, at the time of the sealing and delivery of these presents, lawfully, rightfully, and absolutely seized in his demesne as of fee, of and in the said messuages, lands, tenements, hereditaments, and premises hereby granted and released, or mentioned and intended so to be, and of every part and parcel thereof, with their and every of their appurtenances, of a good, sure, perfect, lawful, absolute and indefeasible estate of inheritance, in fee simple, to him and his heirs, without any manner of condition, trust, power of revocation, limitation of use or uses, or any other restraint, act, deed, matter, or thing whatsoever, to alter, change, charge, defeat, revoke, impeach, make void, lessen, incumber, or determine the same, (*except as hereinafter is excepted*). *And further*, that he the said *A. B.* (for and notwithstanding any such act, deed, matter, or thing as aforesaid) now hath in himself at the time of sealing and delivery of these presents, good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and convey, all and singular the hereditaments and premises herein before granted and released, with their and every of their appurtenances, unto the said *E. F.* his heirs and assigns, in manner and form aforesaid, according to the purport, true intent and meaning of these presents; *And likewise*, that it shall and may be lawful to and for the said *E. F.* his heirs, and assigns, from time to time, and at all times, from and after default shall happen to be made of or in payment of the said sum of £— and interest, at the rate aforesaid, or any part thereof, contrary to the form and

effect, and true intent and meaning of the
aforesaid proviso and covenant for payment of
the same, peaceably and quietly to enter into,
have, hold, occupy, possess, and enjoy all
and singular the aforesaid hereditaments and
premises, with their and every of their appur-
tenances, and to receive and take the rents,
issues, and profits thereof, and of every part
and parcel thereof, to his and their own use
and benefit, without any lawful let, suit, trou-
ble, molestation, eviction, ejection, interrup-
tion, or disturbance whatsoever, of, from, or
by the said *A. B.* and *C.* his wife, or either
of them, their, or either of their heirs, or
assigns, or of, from, or by any other person
or persons whomsoever, lawfully claiming,
or who shall or may lawfully claim by, from,
or under, or in trust, for him, them or any of
them. *And that* free and clear, and freely,
clearly, and absolutely acquitted, exonerated,
and discharged, or otherwise by the said *A. B.*
his heirs, executors, or administrators, well
and sufficiently saved, defended, kept harmless,
and indemnified of, from, and against all for-
mer and other gifts, grants, bargains, sales,
leases, mortgages, jointures, settlements,
dowers, annuities, uses, trusts, wills, entails,
statutes, recognizances, forfeitures, judgments,
executions, extents, rents, and arrears of rent,
and of, from, and against all and singular
other estates, titles, troubles, charges, and in-
cumbrances whatsoever, had, made, done,
committed, or executed, or wittingly or
willingly permitted or suffered by him the
said *A. B.* or by any other person, or persons
whomsoever, lawfully claiming, or to claim,
by, from, or under, or in trust, for him,
them, or any of them, save and *Except* a cer-
tain indenture of lease thereof made, bearing

date on or about the — day of — last past, for the term of — years from thence next ensuing, unto *M. N.* of, &c. his executors and administrators, at and under the yearly rent of — clear of taxes. *And moreover*, that he the said *A. B.* his heirs and assigns, and all and every other person and persons, having, or lawfully claiming, or who shall or may lawfully have, or claim any estate, right, title, trust, or interest, either at law or in equity, of, in, to, or out of the said messuages, lands, tenements, hereditaments, and premises hereby granted and released, or mentioned and intended so to be, or any part or parcel thereof, by, from, or under, or in trust for him, them, or any of them, shall and will from time to time, and at all times from and after default shall be made of or in payment of the said sum of — and interest as aforesaid, or any part thereof, contrary to the form and effect of the aforesaid proviso and covenant for payment of the same, and the true intent and meaning of these presents, upon the reasonable request of the said *E. F.* his heirs, or assigns, and at the proper costs and charges in the law of the said *E. F.* his heirs, executors, administrators, or assigns, make, do, acknowledge, levy, suffer, and execute, or cause, and procure to be made, done, acknowledged, levied, suffered and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law whatsoever, whether by fine, recovery, or otherwise, for the further, better, more perfect, and absolute granting, conveying, assuring, and confirming of all and singular the hereditaments and premises hereinbefore mentioned, and intended to be hereby granted

and released, with their and every of their appurtenances, unto and to the use of the said *E. F.* his heirs and assigns, (freed and absolutely discharged of and from all right, power, and equity of redemption whatsoever,) as by the said *E. F.* his heirs, or assigns, or his or their counsel, learned in the law, shall be reasonably devised, or advised and required. *And lastly,* it is hereby declared and agreed by and between the said parties to these presents, and the true intent and meaning of them and of these presents is, that in the mean time, and until default shall happen to be made of, or in payment of the said sum of £—— and interest according to the form and effect, and true intent and meaning of the aforesaid proviso and covenant, for payment of the same, it shall and may be lawful to and for the said *A. B.* his heirs and assigns, peaceably and quietly to have, hold, occupy, possess, and enjoy all and singular the hereditaments and premises hereinbefore mentioned, and to receive and take the rents, issues, and profits thereof, and of every part and parcel thereof, to and for his and their own free use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption, or disturbance whatsoever, of, from, or by the said *E. F.* his heirs, executors, administrators, or assigns or of, from, or by any other person or persons whomsoever, lawfully claiming, or to claim, from, by, or under him, them, or any of them. *In witness, &c.*

* *A mortgage in fee, with appointment of a receiver to keep down interest, and an assignment of a policy of insurance as a further security.*

THIS indenture made, &c. between C. D. of, &c. of the first part, E. F. of, &c. of the second part, and F. G. of, &c. (a receiver appointed for the purposes hereinafter mentioned) of the third part, *Witnesseth*, that for and in consideration of the sum of £—— of lawful money of *Great Britain*, to the said C. D. in hand well and truly paid by the said E. F. at or before the sealing and delivery of these presents, the receipt whereof he the said C. D. doth hereby acknowledge, and thereof and therefrom, and from every part thereof doth acquit, release, exonerate, and for ever discharge the said E. F. his heirs, executors, administrators and assigns, and every of them by these presents, he the said C. D. *Hath* granted, bargained sold, aliened, released, and confirmed, and by these presents *Doth* grant, bargain, sell, alien, release, and confirm unto the said E. F. (in his actual possession now being by virtue of a bargain and sale for one whole year to him thereof made by the said C. D. by indenture bearing date the day next before the day of the date of these presents, and by force of the statute made for transferring uses into possession) and to his heirs, *All* that ——— &c. together with all ways, waters, watercourses, easements, profits, privileges, liberties, commodities, advantages, emoluments, hereditaments and appurtenances whatsoever, to the said messuages, lands, hereditaments, and premises belonging

or in any wise appertaining, or therewith, or with any part or parcel thereof usually held, used, occupied, or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member thererof, or of any part thereof. And the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits thereof, and of every part and parcel thereof. And all the estate, right, title, interest, trust, property, claim and demand whatsoever, both at law and in equity, of him the said *C. D.* of, in, to, or out of the same premises, every, or any part or parcel thereof. And all deeds, evidences, and writings whatsoever, in the custody or power of the said *C. D.* which concern or relate to the said premises hereby granted and released, or any part or parcel thereof solely and alone, and true and attested copies of all such other deeds, evidences, and writings in the custody or power of the said *C. D.* which concern or relate to the same premises, or any part or parcel thereof, jointly with any other lands, tenements, or hereditaments, such copies to be transcribed and taken at the costs and charges of the said *C. D.* his executors, administrators, or assigns, *To have and to hold* the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereby granted and released, or mentioned and intended so to be, and every part and parcel thereof with their and every of their appurtenances, unto the said *E. F.* his heirs and assigns, to the only proper use and behoof of the said *E. F.* his heirs and assigns for ever, subject to the proviso or condition for redemption of the said premises herein after mentioned, that is to say, *Provided* *Proviso for redemption* *always* nevertheless, and these presents are upon this expresse condition, and it is the true

intent and meaning hereof, and of the parties hereunto, that if the said *C. D.* his heirs, executors, administrators, or assigns, or some or one of them, do, and shall well and truly pay, or cause to be paid unto the said *E. F.* his executors, administrators, or assigns, the full and just sum of — of lawful money of *Great Britain*, with interest for the same, at the rate of 5*l.* per cent. for every one hundred pounds by the year, on the — day of — next ensuing the date hereof, *without any deduction, defalcation, or abatement, for or in any respect whatsoever**; then and in such case he, the said *E. F.* his heirs, executors, administrators, or assigns, shall and will at any time or times after such payment being made as aforesaid, upon the request and at the costs and charges in the law of the said *C. D.* his heirs, executors, administrators, or assigns, re-convey, and re-assure all and singular the said messuages, lands, tenements, hereditaments and premises hereby granted and released with their and every of their appurtenance, unto the said *C. D.* his heirs and assigns for ever; or to such person or persons, and to, for, and upon such estate and estates, uses, trusts, intents and purposes as he the said *C. D.* his heirs, and assigns shall in writing for that purpose, under his or their hands and seals direct or appoint, free from all incumbrances whatsoever, to be made, done, or committed by the said *E. F.* his heirs, executors, or administrators, or by any other person or persons whomsoever, lawfully claiming, or to claim

* These words are synonymous to and as strong as those in the preceding proviso. See *Bradbury and Wright, Dong. 605.* But it should seem from an observation on this point in a subsequent precedent, that they are both capable of improvement.

Usual
covenants.

from, by, or under him, them, or any of them, any thing herein contained to the contrary thereof in any wise notwithstanding, so as for the doing thereof, the said *E. F.* his heirs, executors, administrators, or assigns be not compelled or compellable to go or travel from his or their then respective place or places of abode. *And* the said *C. D.* for himself, his heirs, executors, and administrators, and for every of them, doth covenant, promise, grant, and agree to and with the said *E. F.* his executors, administrators, and assigns, by these presents in manner following, that is to say, that he the said *C. D.* his heirs, executors, or administrators, or some or one of them, shall and will well and truly pay, or cause to be paid unto the said *E. F.* his executors, administrators, or assigns, the said sum of — with interest for the same, at the rate aforesaid, on the — day of — next ensuing the date hereof without any deduction, defalcation, or abatement, for or in any respect whatsoever, according to the purport of the aforesaid proviso, and the true intent and meaning of these presents; *And also* that he the said *C. D.* (for and notwithstanding any act, deed, matter, or thing whatsoever by him the said *C. D.* or his executors done, committed, or executed, or wittingly or willingly suffered to the contrary) now is at the time of the sealing and delivery of these presents, lawfully, rightfully, and absolutely seized in his demesne, as of fee of, and in the said messuages, lands, tenements, hereditaments, and premises hereby granted and released, or mentioned and intended so to be, and of every part and parcel thereof, with their and every of their appurtenances, of a good, sure, perfect, lawful, absolute, and indefeasible estate of inheritance

in fee simple to him and his heirs, without any manner of condition, trust, power of revocation, limitation of use, or uses, or any other restraint, act, deed, matter or thing whatsoever, to alter, change, charge, defeat, revoke, impeach, make void, lessen, incumber or determine the same (*Except as herein after is excepted*) And further, that he the said C. D. (for and notwithstanding any such act, deed, matter, or thing as aforesaid) now hath in himself at the time of the sealing and delivery of these presents, good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and convey all and singular the hereditaments and premises herein before granted and released, with their and every of their appurtenances, unto the said E. F. his heirs, and assigns, in manner and form aforesaid, according to the purport, true intent, and meaning of these presents. And likewise, that it shall and may be lawful to and for the said E. F. his heirs and assigns, from time to time, and at all times from and after default shall happen to be made of or in payment of the sum of — and interest, at the rate aforesaid, or any part thereof, contrary to the form and effect and true intent and meaning of the aforesaid proviso and covenant for payment of the same, peaceably and quietly to enter into, have, hold, occupy, possess, and enjoy all and singular the aforesaid hereditaments and premises, with their and every of their appurtenances, and to receive and take the rents, issues, and profits thereof, and of every part and parcel thereof to his and their own use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption, or disturbance whatsoever, of, from, or by the said C. D.

his heirs, or assigns, or of, from, or by any other person or persons whomsoever, lawfully claiming, or who shall or may lawfully claim by, from, or under, or in trust for, him, them, or any of them, (*Save as herein after is excepted*). And that free and clear, and freely, clearly, and absolutely acquitted, exonerated, and discharged, or otherwise by the said C. D. his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, settlements, jointures, dowers, annuities, uses, trusts, wills, entails, statutes, recognizances, forfeitures, judgments, executions, extents, rents, and arrears of rent, and of, from, and against, all and singular other estates, titles, troubles, charges, and incumbrances whatsoever, had, made, done, committed, or executed, or wittingly or willingly permitted, or suffered, by him the said C. D. or by any other person or persons whomsoever lawfully claiming or to claim, by, from, or under, him, them, or any of them, *Except, &c. (here insert any existing leases, or other charges or incumbrances affecting the premises)* And moreover, that he the said C. D. and his heirs, and all and every other person and persons, having, or lawfully claiming, or who shall or may lawfully have, or claim any estate, right, title, trust, or interest, either at law or in equity, of, in, to, or out of the said messuages, lands, tenements, hereditaments and premises hereby granted and released, or mentioned, and intended so to be, or any part or parcel thereof, by, from, under, or in trust for him, them, or any of them, or his or their ancestors, shall and will from time to time and at all times from and after default shall be

made of or in payment of the said sum of — and interest, as aforesaid, or any part thereof, contrary to the form and effect of the aforesaid proviso and covenant for payment of the same, and the true intent and meaning of these presents, upon the reasonable request of the said *E. F.* his heirs or assigns, and at the proper costs and charges in the law, of the said *E. F.* his heirs, executors, administrators or assigns, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law whatsoever, whether by fine, recovery, or otherwise, for the further, better, more perfect, and absolutely granting, conveying, assuring, and confirming all and singular the hereditaments, and premises herein before mentioned, and intended to be hereby granted and released, with their and every of their appurtenances unto and to the use of the said *E. F.* his heirs and assigns, freed and absolutely discharged from the aforesaid proviso for redemption of the said premises, and of and from all such right, power, and equity of redemption whatsoever, as by the said *E. F.* his heirs, or assigns, or his or their counsel learned in the law, shall be reasonably devised, or advised and required. *And this indenture further witnesseth*, that, for the considerations aforesaid, and for the better and more effectually securing the regular and punctual payment of the interest of the said principal sum of — unto the said *E. F.* his executors, administrators and assigns, by even and equal half-yearly payments, that is to say, on the — day of — and the — day of — in each and every year during such time as the said principal

Appoint-
ment of a
receiver of
the rents,
of the
estate, to
keep down
the interest
of the mort-
gage money

sum of — or any part thereof shall remain due and unsatisfied, he the said *C. D.* (at the nomination and appointment of the said *E. F.* testified by his being made a party to, and his sealing and delivery of these presents) *Hath* made, deputed, constituted, and appointed, and in his place and stead put the said *F. G.* his receiver, agent, and true and lawful attorney, irrevocable, in the name of him the said *C. D.* to ask, demand, and receive, of, and from all and every, or any the tenant and tenants, of him the said *C. D.* now holding or occupying, or who shall or may during the continuance of these presents, hold, or occupy all or any part or parcel of the said mortgaged messuages, lands, tenements, hereditaments, and premises, and of all and every the rents and profits thereof, and of every or any part or parcel thereof, which shall from henceforth become due or payable for the same; and on default of payment thereof, or of any part thereof in the name of him the said *C. D.* to enter into and upon all or any of the said mortgaged messuages, lands, tenements, hereditaments and premises, and there to distrain for such rents and profits as shall be so in arrear, and such distress or distresses as shall be there found to take, lead, drive, carry away, and impound, and in pound to detain and keep, or otherwise to dispose thereof, according to due course of law, until he the said *E. F.* shall be of such rents and profits duly satisfied, contented and paid; or in the name of him the said *C. D.* to sue for and prosecute in all or any of his Majesty's courts of law or equity, all and every, or any of the tenant or tenants of the said mortgaged premises that shall from time to time be so in arrear of his, her, or their respective rents, and in the suit

or suits so had to proceed until such rents shall be fully paid and satisfied. And generally to act and do all and every other matter and thing whatsoever, for the collecting, receiving and getting in the rents and profits of the said mortgaged premises, and every or any part thereof, as fully and effectually to all intents and purposes as he the said *C. D.* might do if personally present, he the said *C. D.* hereby ratifying, confirming, and allowing whatsoever his said attorney shall lawfully do or cause to be done in or about the said premises, *Upon the trusts nevertheless*, and to and for the intents and purposes herein after mentioned, that is to say, in the first place, thereout to pay and allow all parliamentary and parochial taxes, and in the next place to pay and satisfy unto the said *E. F.* his executors, administrators, and assigns, all interest due and payable, and from time to time to become due and payable, for or in respect of the said principal sum of — at such rate, and at such days and times, and in such manner, as the same is herein before made payable, according to the purport, true intent and meaning of these presents. And after full payment thereof, in the next place, to detain and satisfy unto himself, all reasonable and necessary expences attending the collecting, receiving, or getting in the said rents and profits; and also the salary or yearly sum of — for his pains and trouble in and about the premises, for so long time as he shall be continued receiver or attorney, and employed in collecting, receiving and getting in the said rents and profits, in manner and for the purposes aforesaid. And upon further trust, to render and pay all the then residue and overplus of such rents and profits unto him the said *C. D.* his heirs and assigns, or as he or

they shall direct or appoint to and for his and their own free use and benefit. *And* the said *C. D.* doth hereby direct, order, and appoint all and every the tenant and tenants of the said mortgaged messuages, lands, tenements, hereditaments, and premises, and of any and every part and parcel thereof, to pay unto the said *F. G.* all and every the rents and profits of the said premises for the purposes aforesaid, as the same shall from time to time become due and payable; And doth hereby declare and agree that the receipt and receipts of the said *F. G.* shall be good, effectual, and sufficient discharges for the same respectively. *And* the said *C. D.* doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said *E. F.* his heirs, executors, administrators, and assigns, in manner following: that is to say, that he the said *C. D.* shall not, nor will (without the privity and consent of the said *E. F.* his executors, administrators, or assigns, first obtained for that purpose in writing, under his or their hands and seals) revoke, or make void this present appointment or letter of attorney, hereby made, or the power and authority hereby given, unto the said *F. G.* until the said principal sum of — and all the interest thereof shall be fully paid and satisfied; but shall and will, in case the said *F. G.* shall die, or shall neglect, refuse, or decline to proceed in collecting, receiving, and getting in the said rents and profits, before the said principal sum of — and all the interest thereof shall be fully paid and satisfied, make, and execute one or more sufficient letter or letters of attorney, whereby to authorize such other fit and proper person or persons, to collect, receive, and get in the rents and profits of the said mort-

gaged premises, upon the trusts, and for the purposes aforesaid, as he the said *E. F.* his executors, administrators, or assigns, shall from time to time nominate and appoint. *And* the said *F. G.* doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said *C. D.* his executors, administrators, and assigns, that he the said *F. G.* shall and will from time to time, and so long as he shall be continued receiver or attorney, and employed in manner and for the purposes aforesaid, well and truly pay, apply, and dispose of all and every the rents and profits of the said mortgaged premises, by him from time to time to be received for such purposes, and in such manner, as are herein before in that behalf directed and agreed upon, according to the purport, true intent, and meaning of these presents, and the trust hereby in him reposed.

And this indenture also further witnesseth, that for the considerations aforesaid, and for the better and more effectually securing the repayment of the aforesaid principal sum of — and interest for the same, unto the said *E. F.* as aforesaid, He the said *C. D.* hath assigned, transferred, and set over, and by these presents doth assign, transfer, and set over unto the said *E. F.* his executors, administrators, and assigns, one instrument or policy of insurance (number 1120) bearing date the — day of — one thousand seven hundred and — whereby the said several messuages, or tenements called, &c. stand insured from the day of the date of the said policy, for the several sums of — in the office commonly called the Sun Fire Office, for insuring houses from loss by fire; and all and every other policy of insurance now in being

Assignment
of policy of
insurance
as a further
security.

for insuring of all or any part or parcel of the
aforesaid premisses from loss by fire, and all
and every sum and sums of money, benefit,
profit, and advantage to arise, or be had, re-
ceived or made from or by the same, any or
either of them, *To have and to hold*, receive, take,
and enjoy the said policy or policies, sum and
sums of money, benefit, profit, and advantage
whatsoever, hereby assigned or mentioned and
intended so to be, unto the said *E. F.* his execu-
tors, administrators, and assigns, to and for his
and their own proper use and benefit; subject
nevertheless to the proviso for redemption of
the said messuages or tenements, lands, here-
ditaments and premisses herein before men-
tioned. *And* the said *C. D.* doth hereby for
himself, his heirs, executors, and administra-
tors, covenant, promise, and agree to, and
with the said *E. F.* his executors, administra-
tors, and assigns, in manner following, that is
to say, that he the said *C. D.* shall and will
from time to time at his and their own proper
costs and charges, during the continuance of
the mortgage or security hereby made, before
or immediately upon the expiration of the
said hereby assigned policy, renew the said
policy for a further term or terms of years,
and so from time to time renew such policy in
such manner as that the said several messuages
or tenements and premises, and every of them
may be always kept insured from loss by
fire during the continuance of the mortgage
or security hereby made. *And also* shall and
will from time to time well and truly pay or
cause to be paid unto the said society or com-
pany called the Sun Fire Office Company, the
several payments due or accustomed to be paid
for or in respect of the said policy at the times
limited and appointed for the payment thereof

respectively, so as to preserve the said *E. F.* his executors, administrators, or assigns from any penalty or forfeiture for or in respect of the non-payment thereof; and so as to prevent the said *E. F.* his executors, administrators, and assigns from being excluded from the benefit or advantage of the said policy; *and further*, that he the said *C. D.* his heirs or assigns, shall and will from time to time produce and deliver unto the said *E. F.* his executors, administrators, or assigns, proper vouchers for such respective payments as aforesaid; and in default of either of the matters aforesaid, that the said *E. F.* his executors, administrators, or assigns, shall and may during such time as the said principal sum of 800*l.* and the interest thereof, or any part thereof, shall remain unpaid, from time to time pay and discharge such payment as aforesaid; and that all and every such sum and sums which he the said *E. F.* his executors, administrators, and assigns, shall so as aforesaid pay unto the said society or company called the Sun Fire Office Company for the purposes aforesaid, together with interest for the same, at the rate of five pounds *per centum per annum*, to be computed from the time or times of each such respective payment, shall be a further charge on the said messuages, lands, tenements, hereditaments, and premises hereby granted and released, and on the policy hereby assigned; and that neither the said messuages, lands, tenements, hereditaments, and premises, nor the said policy nor either of them shall be redeemed or redeemable, or these presents determined until the said principal sum of 800*l.* and the interest thereof, and the monies hereby intended to be secured as aforesaid, with the interest for the same, at the rate aforesaid, shall be fully paid and satisfied. *And lastly*, it is hereby declared and

agreed by and between the said parties to these presents, and the true intent and meaning of them and of these presents is, that in the mean time, and until default shall happen to be made of or in payment of the said sum of 800^l. and interest, contrary to the form and effect and true intent and meaning of the aforesaid proviso, and covenant for payment of the same, it shall and may be lawful to and for the said *C. D.* and his heirs, peaceably and quietly to have, hold, occupy, possess and enjoy all and singular the hereditaments and premises herein before mentioned and intended to be hereby granted and released as aforesaid, and to receive and take the rents, issues, and profits thereof, and of every part and parcel thereof, to and for his and their own free use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption or disturbance whatsoever, of, from or by the said *E. F.* his heirs, executors, administrators, or assigns, or any of them, or of, from, or by any other person or persons whomsoever, lawfully claiming or to claim from, by, or under him them or any of them. *In witness, &c.*

** Further mortgage by indenture, with the additional security of a bond.*

THIS indenture, made, &c. between *A. B.* of &c. of the one part, and *C. D.* of &c. of the other part. *Whereas* by indentures of lease and release, the lease bearing date the day next before the day of the date of the release, and the release bearing date on or about the ——— day of ——— which was in the year 1795, and made or expressed to be made between the said *A. B.* party to these

presents of the one part, and the said *C. D.* party also hereto of the other part, *all* that and those, &c. &c. were granted conveyed and assured unto the said *C. D.* his heirs, executors, administrators, and assigns, by way of mortgage, *subject to redemption* on payment by the said *A. B.* his heirs, executors, administrators, or assigns, unto the said *C. D.* his executors, administrators, or assigns, of the principal sum of 1500*l.* and interest for the same, after the rate of 4*l.* for each one hundred pounds, by the year, on the — day of — then next ensuing as in and by the said in part recited indenture of release, reference being thereunto had, may more fully and at large appear. *And whereas* the said principal sum of 1500*l.* still remains due and owing from the said *A. B.* to the said *C. D.* but all interest for the same hath been paid and satisfied up to the — day of — last past. *And whereas* the said *C. D.* hath advanced and lent unto the said *A. B.* on the day of the date hereof the further sum of 300*l.* the receipt of which the said *A. B.* doth hereby acknowledge, and thereupon the said *A. B.* hath entered into one bond or writing obligatory under his hand and seal, bearing even date with these presents to the said *C. D.* in the penal sum of 600*l.* of lawful money of Great Britain, with a condition thereunder written, for making the same void upon payment by the said *A. B.* his heirs, executors, or administrators, unto the said *C. D.* his executors, administrators, or assigns, on the — day of — next, of the sum of 300*l.* of like lawful money, with interest for the same, at the rate of 5*l.* for each one hundred pounds by the year, as in and by the said recited bond or writing obligatory, reference being thereunto had may more fully appear. *Now this in-*

denture witnesseth, that for the better and more effectually securing the repayment of the said sum of 300*l.* so as aforesaid this day lent, advanced, and paid, with the interest thereof, at the rate aforesaid, unto the said *C. D.* his executors, administrators, and assigns, according to the purport, true intent and meaning of the said recited bond, he the said *A. B.* for himself, his heirs, executors, and administrators *doth* covenant, promise and agree to and with the said *C. D.* his executors, administrators, and assigns, by these presents, in manner following, that is to say, that *all* and singular the messuages, lands, tenements, hereditaments, and premises, mentioned and comprized in the above in part recited indenture of release, by way of mortgage, and every part and parcel thereof, with their and every of their appurtenances, shall from henceforth remain and be liable to and stand charged and chargeable with and be a security to the said *C. D.* his executors, administrators, and assigns, as well for the payment of the said sum of 300*l.* so as aforesaid this day lent and advanced, and interest for the same at the rate mentioned in the above recited bond, as also with and for the payment of the said principal sum of 1500*l.* before lent and advanced, and interest for the same as aforesaid. *And* that the before mentioned messuages, tenements, hereditaments, and premises, or any part or parcel thereof, shall not be redeemed or redeemable, either at law or in equity, until not only the above mentioned sum of 1500*l.* before lent and the interest thereof, but also the above mentioned sum of 300*l.* now lent, and the interest thereof, shall be fully paid and satisfied unto the said *C. D.* his executors, administrators, or assigns, accord-

ing to the condition of the above recited bond, and the true intent and meaning of these presents. *And also* that he the said *A. B.* his heirs, executors, administrators, or assigns, or some or one of them shall and will well and truly pay or cause to be paid unto the said *C. D.* his executors, administrators, or assigns, the said sum of 300*l.* together with the interest for the same, at the rate aforesaid, according to the condition of the above recited bond, and the true intent and meaning of these presents, without any deduction or abatement whatsoever. *In witness, &c.*

** Mortgage of the reversion of freehold and copyhold estates.*

THIS Indenture of three parts, made, &c. between *L. J.* of &c. of the first part, *B. H.* of, &c. of the second part, and *D. I.* of, &c. of the third part. *Whereas* by virtue of a certain indenture, bearing date, &c. and expressed to be made between *R. J.* and *E.* his wife, both since deceased, of the first part, *R. W.* (son and heir apparent of the said *R. J.* and the said *E.* his wife) and *S.* afterwards the wife of the said *R. W.* but then the widow and relict of *C. R.* then late of, &c. aforesaid, and both since deceased, of the second part; *J. W.* of &c. of the third part, and *N. W.* of, &c. gentleman, of the fourth part, (purporting to be a settlement made in contemplation of the marriage of the said *R. W.* with the said *S.* his late wife, and by virtue of a fine *sur conuzance de droit come-ceo*, &c. levied in his Majesty's Court of Common

Pleas at Westminster, in Trinity Term, in &c. the messuage or tenement and freehold lands and hereditaments hereinafter described, and intended to be hereby granted and demised were, and stood limitted from and after the solemnization of the said then intended marriage, to the use of the said *N. W.* his executors, administrators, and assigns, for a term of 200 years, upon certain trusts therein expressed and subject thereto to such other uses as in and by the same indenture are limitted, expressed, and declared, concerning the same premises. *And whereas* by indenture bearing date, &c. and expressed to be made between *R. C.* one of the sons of the said *R. J.* the father, and of the said *E.* his wife, who were both then dead of the first part, the said *W. N.* of the second part, and *R. W.* the elder, party to the said last recited indenture, *R. W.* his eldest son by the said *S.* his wife, who was also then dead, *R. W.* the younger, another of the sons of the said *R. W.* the elder, by his said wife, and the said *D. J.* of the third part, after reciting amongst other things, that the trusts of the said term of 200 years had been duly satisfied and discharged, he the said *N. W.* did by such direction as therein mentioned, duly assign the aforementioned premises with the appurtenances, unto the said *D. J.* his executors, administrators, and assigns, for the remainder of the said 200 years, to attend the inheritance. *And whereas* by indentures of lease and release, bearing date respectively on or about, &c. the release being of three parts, and expressed to be made between the said *R. W.* and *R.* his wife, since deceased, of the first part, *D. E.* of &c. of the second part, and *R. J.* &c. of &c.

of the third part, by virtue of a common recovery suffered in pursuance of the same indenture of release in his Majesty's Court of Common Pleas at Westminster in ——— term in the ——— year of his present Majesty's reign, in which the said *R. J.* was demandant, the said *D. E.* was tenant, and the said *R. W.* and *R.* his wife, were vouchees, the said messuage or tenement, lands and hereditaments contained in the said hereinbefore recited settlement, and hereinafter particularly described, were limited, settled, and assured to the use of such person and persons, and in such parts, shares, and proportions, and for such estate and estates, interest and interests, and subject to such charges and payments, and in such sort, manner, and form with or without power of revocation, as the said *R. W.* and *R.* his wife, during their joint lives, by any deed or deeds in writing to be by them sealed and delivered in the presence of and attested by two or more credible witnesses, should jointly from time to time, or at any time, declare, direct, limit, or appoint, and in default of such appointment, to the use of the said *R. W.* and his assigns for his life, without impeachment of waste, with remainder to the use of the said *R.* his then wife, for her life, without impeachment of waste, with remainder to the use of the heirs of the body of the said *R. W.* by the said *R.* his then wife, lawfully to be begotten, and for want of such issue to the use of the said *L. J.* his heirs and assigns for ever. *And whereas* at a court baron holden for the manor of ——— in *Es.* on or about the — day of — the copyhold or customary lands, tenements, and hereditaments hereinafter described, were duly surrendered by the said *R. W.* and *R.* his wife,

to and for the same or the like uses and estates as are herein before expressed to be limited by the indenture of release last herein before recited of and concerning the freehold premises thereby granted and released. *And whereas* the said *R. W.* and *R.* his wife, did never exercise the power of appointment reserved to them by the herein before recited indenture of *&c.* and the said *R.* hath departed this life without leaving issue of her body by the said *R. W.* begotten, whereby the said *R. R.* is become tenant in tail of the premises after possibility of issue extinct; and the said *L. J.* is intitled to the reversion or remainder in fee-simple, expectant on the death of the said *R. R.* *And whereas* the said *L. J.* having occasion for the sum of ——— *l.* hath applied to the said *B. H.* to lend and advance the same, which the said *B. H.* hath consented and agreed to do upon having the repayment thereof, with interest, secured to him by the bond of the said *L. J.* and by a mortgage of such remainder or reversion in manner herein after mentioned. *And whereas* the said *L. J.* in part pursuance of the said agreement, hath this day executed a bond to the said *B. H.* in the penal sum of ——— which said bond is conditioned to be void on payment of ——— by the said *L. J.* his heirs, executors, administrators, or assigns, unto the said *B. H.* his executors, administrators, or assigns, of the said sum of ——— with interest for the same, after the rate, at the time, and in manner hereinafter mentioned. *Now this indenture witnesseth,* That in consideration of the sum of ——— of lawful money of Great Britain, by the said *B. H.* to the said *L. J.* in hand paid, on or before the sealing or delivery of these presents, (the receipt whereof he the said *L. J.*

Demise.

doth hereby acknowledge, and thereof, and therefrom, and of and from every part thereof doth acquit, release, and for ever discharge the said *B. H.* his heirs, executors, and administrators and every of them, by these presents) and for the better securing the payment thereof with interest, after the rate, and in manner hereinafter mentioned, he the said *L. J.* hath granted, bargained, sold and demised, and by these presents doth grant, bargain, sell, and demise to the said *B. H.* his executors, administrators, and assigns, all, &c. and all houses, outhouses, edifices, buildings, barns, stables, yards, gardens, orchards, tofts, curtilages, lands, meadows, pastures, feedings, moors, marshes, trees, woods, underwoods, and the ground and soil thereof, commons, common of pasture, ponds, pools, waters and grounds covered with water, watercourses, ways, paths, passages, lights, and appurtenances whatsoever, to the same premises or any of them, belonging or appertaining, or usually held, occupied, or enjoyed therewith, or with any of them or reputed, deemed, or known as part, parcel, or member of the same; and the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits thereof, and of every part and parcel thereof; and all the estate, right, title, interest, use, trust, property, claim, and demand whatsoever at law or in equity, of him the said *L. J.* of, in, to, or out of the same premises, and every part and parcel thereof, *To have and to hold* the said messuage or tenement, lands, hereditaments, and all and singular other the premises, hereinbefore expressed to be hereby granted and demised, with their and every of their rights, members, and appurtenances unto the said *B. H.* his

Parcels and
general
words.

executors, administrators or assigns, for the term of 1000 years, to commence and be computed from the day next before the date of these presents, and to be fully complete and ended, without impeachment of waste, subject nevertheless to the estate for life of the said *R. W.* under and by virtue of the said herein-before recited indenture of release of the — day of — and the common recovery suffered in pursuance thereof, and subject also to the proviso or condition for redemption of the same premises hereinafter contained, (that is to say) *Provided* always, and it is hereby declared and agreed, by and between the said *L. J.* and *B. H.* that if the said *L. J.* his heirs, executors, administrators or assigns, do and shall well and truly pay or cause to be paid unto the said *B. H.* his executors, administrators or assigns, at or in the common dining hall of Lincoln's Inn, in the county of Middlesex, the full and just sum of — of lawful money of Great Britain, together with interest for the same, at the rate of — for the interest of each sum or — by the year, of like lawful money, on the — day of — next ensuing the date of these presents, without any deduction, defalcation or abatement, for or in any respect whatsoever; and if the said *L. J.* his heirs, executors, administrators or assigns do, and shall in the mean time well and truly pay and discharge, by and with his and their own proper monies, all and singular taxes, charges, dues, duties, rates, assessments, and other payments and impositions whatsoever, already taxed, charged, assessed or imposed, or usually payable, or which shall or may at any time hereafter be taxed, charged, assessed or imposed upon, or otherwise become payable in

respect of the said premises, or any part thereof, * *whether the same be of the nature of those now in being, or of any other kind or nature whatsoever,* or of the said principal sum of — or the interest thereof, by authority of parliament, or otherwise howsoever, then and in such case, the said term of 1000 years hereby created, shall cease, determine and be void, to all intents and purposes whatsoever, any thing hereinbefore contained to the contrary notwithstanding. *And this indenture further witnesseth,* that for better securing to the said *B. H.* his executors, administrators and assigns, the repayment of the said sum of — together with the interest for the same, after the rate and in manner aforesaid, he the said *L. J.* doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said *B. H.* his heirs and assigns, that he the said *L. J.* or his heirs, shall and will with all convenient speed, after the execution of these presents, surrender or cause to be surrendered or otherwise well and effectually assured, according to the custom of the manor of — aforesaid, *all that* the remainder or reversion expectant on the decease of the said *R. W.* of and in all that, &c. to the use of the said *B. H.* his heirs and assigns for ever, according to the custom of the same manor, subject nevertheless to a proviso or condition for making void the same surrender, on payment to the said *B. H.* his executors, administrators or assigns, of the said sum of — and interest, after the rate, at the time, and in manner hereinbefore expressed. *And the said L. J.* doth hereby for himself and

Covenant
to surrend-
er the copy-
hold,

Usual co-
venants.

* It seems to be the better opinion, that if these words were omitted, this provision would not extend to *new* taxes but only to an increase of taxes in use at the time the deed was executed. 2 *Ak.* 244.

his heirs, executors and administrators, and every of them, further covenant with the said *B. H.* his executors, administrators and assigns, by these presents, in manner following (that is to say) that he the said *L. J.* now is, and stands lawfully, rightfully and absolutely intitled to the said freehold messuage or tenement, lands, hereditaments, and all and singular other the freehold premises expressed to be hereby granted and demised, with their and every of their appurtenants, and to all and singular the copyhold or customary premises hereinbefore covenanted to be surrendered, with all and every of the appurtenants to the same belonging, of and for a good, sure, perfect, absolute and indefeasible estate of inheritance, in reversion or remainder to him and his heirs immediately expectant on the decease of the said *R. W.* and without any manner of condition, trust, limitation of use or uses, or other cause, matter or thing to alter, change, charge, abridge, defeat, incumber or determine the same estates respectively; and that he the said *L. J.* now hath in himself good right, full power and absolute authority to grant, bargain, sell and demise all and singular the said freehold premises, and to surrender and assure, according to the custom of the said manor, all and singular the said customary or copyhold premises, with their and every of their appurtenants subject as aforesaid, and for such estates, terms and interest as hereinbefore mentioned, according to the true intent and meaning of these presents. *And also* that he the said *B. H.* his heirs, executors, administrators and assigns shall, and may from time to time, and at all times after the decease of the said *R. R.* and after default shall be made in payment of the said sum of — and interest, or any part

thereof, at the time and in manner aforesaid, peaceably and quietly enter into, have, hold, occupy and enjoy, all and singular the said freehold, copyhold and customary premises respectively, with their and every of their appurtenants, for such estates, terms and interests respectively as aforesaid, and receive and take the rents, issues and profits thereof, and of every part thereof, to and for his and their own use and benefit, without any let, suit, trouble, denial, eviction, molestation, disturbance or interruption whatsoever. *And that* free and clear, and freely and clearly acquitted exonerated and discharged, or otherwise by the said *L. J.* his heirs, executors or administrators, well and sufficiently saved, defended and kept harmless and indemnified, of, from and against all manner of right, title and equity of redemption whatsoever, and all former and other estates, titles, troubles, charges, liens, burthens and incumbrances whatsoever. *And further*, that he the said *L. J.* and his heirs, and all and singular other persons having or lawfully claiming any estate, right, title, or interest at law or in equity, into or out of the said freehold and copyhold premises, expressed to be hereby granted and demised, and covenanted to be surrendered, or any part thereof, shall and will from time to time and at all times after default shall be made in payment of the said sum of ——— or any part thereof, or any interest for the same at the time and in manner hereinbefore mentioned in that behalf, upon every reasonable request of the said *B. H.* his heirs, executors, administrators or assigns, but at the proper cost and charge of the said *L. J.* his heirs, executors or administrators, make, do, acknowledge, levy, suffer and execute, or cause or procure to be made done, acknow-

ledged, levied, suffered and executed, all and singular such further and other acts, deeds, devices, conveyances and assurances in the law whatsoever, for the further, better, more perfect and absolute conveying, assuring, demising and surrendering the same freehold and copyhold premises respectively, with their and every of their appurtenances unto and to the use of the said *B. H.* his heirs, executors, administrators and assigns, for such estates, term and interest, and in such manner as hereinbefore is expressed, but freed and discharged of and from all right and equity of redemption whatsoever, as by the said *B. H.* his heirs, executors, administrators or assigns, or any of them or his, their or any of their council, attorney or agent shall be reasonably devised, advised or required. *Provided always,* and it is hereby declared to be the true intent and meaning of the said *L. J.* and *B. H.* that in case the said *R. W.* shall depart this life before the said — day of — now next ensuing, it shall be lawful for the said *L. J.* his heirs and assigns, from and after the decease of the said *R. W.* peaceably and quietly to have, hold and enjoy the said freehold and copyhold or customary premises respectively, and to receive and take the rents, issues and profits thereof, and of every part thereof, until default shall be made in payment of the said sum of — or any part thereof, or any interest for the same pursuant to the proviso hereinbefore contained, without any lawful let, suit, trouble, denial, eviction, disturbance or interruption of or by the said *B. H.* or any other person or persons lawfully claiming or to claim by, from, through, under, or in trust for him, them, or any of them, any thing hereinbefore contained to the contrary hereof in any wise notwithstanding. *And this inden-*

ture further witnesseth, and for the better se- Trusts of
the term.
curing the payment of the said sum of _____
and interest in manner aforesaid, it is hereby
declared and agreed by and between all the
said parties to these presents, that the said *D. J.*
his executors, administrators and assigns shall,
and will from time to time, and at all times
after the decease of the said *R. W.* and during
the continuance of the said term of 200 years,
so assigned to him by the said recited inden-
ture of the _____ day of _____, stand pos-
sessed of and interested in the same term, upon
the trusts, and for the intents and purposes
hereinafter expressed and declared of and con-
cerning the same (that is to say) *in trust* in
the first place for the said *B. H.* his execu-
tors, administrators and assigns, and for better
securing to him and them the repayment of
the said sum of _____ and interest in manner
aforesaid And subject thereto, *in trust* for the
said *L. J.* his heirs and assigns, in order that
the same may attend, wait upon, and go along
with the freehold and inheritance of the same
premises, and protect the same from all mesne
and subsequent incumbrances, if any such
there may be. And the said *D. J.* doth hereby
for himself, his heirs, executors and admi-
nistrators, covenant and declare to and with
the said *L. J.* and *B. H.* and to and with
their several and respective heirs, executors,
administrators and assigns, that he the said
D. J. hath not at any time heretofore made,
done or committed, or wittingly suffered or
been party or privy to any act, deed, matter or
thing whatsoever, whereby or by reason or
means whereof the said term of 200 years, or
any part thereof is, can, shall or may be sur-
rendered, merged, extinguished, impeached,
charged, affected, or incumbered in title, charge,
estate or otherwise howsoever. *In witness, &c.*

* *Release in trust to sell, if the money is not paid according to the last precedent, as a further security.*

THIS Indenture of three parts, made, &c. between *L. I.* of, &c. of the first part, *B. H.* of, &c. of the second part, and *I. S.* and *I. M.* of, &c. of the third part. Whereas, &c. (reciting as in the foregoing precedent is recited, and reciting also such precedent itself) *And whereas* it was also agreed, between the said *L. I.* and *B. H.* on the treaty for the afore-mentioned loan, that, by way of further security for the payment of the said sum of — and interest, in case default shall happen to be made in payment thereof, according to the proviso in the said last recited indenture contained, the said reversion or remainder of *All* and singular the said freehold and copyhold premises, shall be conveyed and assured to the use of the said *I. S.* and *I. M.* upon trust to sell the same, at such time or times as the said *B. H.* his heirs, executors, administrators or assigns, shall direct or require, and to apply the monies arising from such sale or sales in manner hereinafter mentioned. *Now this indenture witnesseth*, that in pursuance of the said agreement, and for better securing the payment of the said sum of — with interest, in manner aforesaid, and in consideration of the sum of 10s. of, &c. by the said *I. S.* and *I. M.* in hand well and truly paid to the said *L. I.* on or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he the said *L. I.* (with the consent and approbation, and by the direction of the said *B. H.*

testified by his being a party to and sealing and delivering these presents), *Hath* granted, bargained, sold, aliened, released and confirmed, and, by these presents, *Doth* grant, bargain, sell, alien, release and confirm, unto the said *I. S.* and *I. M.* (in their actual possession now being, by virtue of a bargain and sale to them thereof made by the said *L. I.* &c.) and to their heirs, *All that, &c.* (vid. mortgage). *To have and to hold* the said messuage or tenement, lands, hereditaments, and all and singular other the premises, hereinbefore expressed to be hereby granted and released, with their and every of their appurtenances, (subject to the estate for life of the said *R. R.* and to the mortgage to the said *B. H.* his executors, administrators or assigns, hereinbefore recited) unto the said *I. S.* and *I. M.* and their heirs, *to the use* of the said *I. S.* and *I. M.* and their heirs and assigns, for ever, *nevertheless*, upon the trusts, and for the intents and purposes hereinafter expressed and declared, of and concerning the same; (that is to say,) *upon trust*, that if the said *L. I.* his heirs, executors, administrators or assigns, shall well and truly pay, or cause to be paid, unto the said *B. H.* his executors, administrators or assigns, the said sum of— together with interest for the same, after the rate, at the time and in manner appointed, for payment thereof, in the said recited indenture of the — day of this instant — Then, and in such case, the said *I. S.* and *I. M.* or the survivor of them, or the heirs of such survivor, do and shall, as soon as conveniently may be after such payment as aforesaid, at the request, cost and charge, of the said *L. I.* his heirs or assigns, reconvey and reassure, all and singular the said free-

Trusts.

hold messuage or tenement, lands, hereditaments and premises, expressed to be hereby granted and released unto and to the use of the said *L. I.* his heirs or assigns, or to such person or persons, and for such uses, intents and purposes, as he or they shall direct or appoint. But, in case default shall be made in payment of the said sum of ——— and interest, or any part thereof, at the time and in manner aforementioned, then, *upon trust*, that they the said *I. S.* and *I. M.* or the survivor of them, or the heirs or assigns of the survivor of them, do and shall, either immediately after such default as aforesaid, or at such future time or times as the said *H. B.* his executors, administrators or assigns, shall require, and without further authority from the said *L. I.* his heirs or assigns, in that behalf, sell and dispose of all and singular the said messuage or tenement, lands, hereditaments and premises, expressed to be hereby granted and released, with their and every of their appurtenances, (subject, nevertheless, to the estate for life of the said *R. R.* in case he shall be then living) either together or in separate parcels, at one or separate times, and either by public auction or sale or by private contract, as shall appear most advantageous, at and for such sum or sums of money as shall appear a good price for the same, and upon receipt of such purchase money, *upon trust* from time to time, to convey and assure all and singular the premises, which shall be so sold, to and for such uses, intents and purposes, as the person or persons purchasing the same shall direct or require. *And* it is hereby declared, that the receipt or receipts of the said *I. S.* and *I. M.* the survivor of them, or of the heirs or assigns of the survivor, shall,

Trustees
receipts to
be good
discharges.

from time to time, be a sufficient and effectual discharge to the person or persons who shall purchase the same premises, or any part of them, for his and their purchase-money; and that such purchaser or purchasers shall not afterwards be answerable or accountable for any loss, misapplication, or nonapplication of such purchase-money, or any part thereof, or be liable to see to the application of the same. *And it is hereby covenanted, declared* Further
and agreed, that the said I. S. and I. M. or trusts.
the survivor of them, or the heirs, executors or administrators of the survivor, shall, with all convenient speed, after such sale or sales respectively, apply and dispose of the clear monies arising therefrom, after deducting the costs of sale in the first place, in payment and satisfaction, to the said H. B. his executors, administrators or assigns, of the said principal sum of ——— together with all interest that shall be then due for the same, without any deduction, defalcation or abatement whatsoever, and do and shall pay over the clear residue and surplus of such purchase monies, if any such there shall be, into the proper hands of the said L. I. his executors, administrators or assigns, or as he or they shall direct or appoint. *And this indenture further* Covenant
witnesseth, and in further pursuance of the said to surren-
agreement, and for the better securing the der the
payment of the said sum of ——— together copyhold
with interest, in manner aforesaid, he the upon same
said L. I. doth hereby, for himself, his heirs, trusts.
executors and administrators, and every of them, covenant, promise and agree, to and with the said I. S. and I. M. their heirs, executors, administrators and assigns, in manner following; (that is to say), that he the said L. I. or his heirs, shall and will, at or before

the next Court Baron to be holden for the manor of ——— duly surrender or cause to be surrendered, or otherwise assured, *All that*, &c. to the use of the said *I. S.* and *I. M.* their heirs and assigns, for ever, according to the custom of the same manor, subject, nevertheless, to the estate for life of the said *R. R.* and to the conditional surrender, covenanted to be made of the same premises, to the use of the said *H. B.* and his heirs, by the said hereinbefore recited indenture of the ——— day of ——— upon the same trusts, and for the same intents and purposes as are hereinbefore expressed and declared, of and concerning the said freehold premises expressed to be hereby granted and released, or as nearly agreeable thereto, as the nature and tenure of such copyhold or customary premises will admit. *And* the said *L. I.* doth hereby, for himself, his heirs, executors and administrators, further covenant with the said *I. S.* and *I. M.* their heirs and assigns, in manner following; (that is to say), that he the said *L. I.* now is, and standeth lawfully, rightfully, and absolutely intitled to the said freehold messuage or tenement, farm, land and hereditaments, hereinbefore expressed to be hereby granted and released, and to all and singular the said copyhold or customary premises hereby covenanted to be surrendered, subject only to the estate for life and mortgage hereinbefore mentioned, of and for a good, sure, perfect, absolute and indefeasible estate of inheritance, to him and his heirs, without any reversion, condition, use, trust, limitation, power of revocation, or any other matter, cause or thing, whatsoever, to alter, change, charge, abridge, make void, revoke, lessen, incumber or determine, the same. *And that* he the

Usual
covenants.

saïd *L. I.* now hath in himself good right, full power and absolute authority, to grant, release, surrender and convey, the same freehold messuage or tenement, and freehold and copyhold or customary lands, hereditaments and premises, expressed to be hereby granted and released, and covenanted to be surrendered respectively, and every part thereof, with their and every of their appurtenances, to the use of the saïd *I. S.* and *I. M.* their heirs and assigns, in manner and subject only as aforesaid, and according to the true intent and meaning of these presents. *And further* that it shall and may be lawful to and for the saïd *I. S.* and *I. M.* or the survivor of them, or the heirs or assigns of the survivor, from time to time and at all times, after default shall be made in payment of the saïd principal and interest, in manner aforesaid, to sell, dispose of, convey and assure, all and singular the saïd freehold and customary, or copyhold premises, respectively, in manner aforesaid, and according to the true intent and meaning of these presents. And that the purchaser or purchasers thereof, respectively, and his, her and their heirs, shall and may, from and after the decease of the saïd *R. R.* enter into, have, hold, and enjoy the same, and receive and take the rents, issues and profits thereof, to his, her and their own use and benefit, without any lawful let, suit, denial, eviction, molestation, disturbance or interruption, whatsoever. *And that* free and clear, and freely and clearly acquitted, exonerated and discharged, or otherwise, by the saïd *L. I.* his heirs, executors or administrators, well and sufficiently saved, defended, kept harmless and indemnified, of, from, and against, all and all manner of former and

other estates, titles, troubles, charges and incumbrances, whatsoever. *And lastly*, that he the said *L. I.* and his heirs, and all and every other person or persons having or lawfully claiming, or who shall or may have or lawfully claim, any estate, right, title, trust or interest, at law or in equity, of, in, to or out of, all or any part of the said freehold and copyhold premises, expressed to be hereby granted and released and covenanted to be surrendered, shall and will, from time to time, and at all times, after such default as aforesaid, at the proper costs and charges of the said *L. I.* his heirs or assigns, make, do, acknowledge, levy, suffer and execute, or cause or procure to be made, &c. all further and other lawful and reasonable acts, deeds, conveyances and assurances, in the law, for the better, more perfect and absolute, granting, conveying, assuring and surrendering, all and singular the said premises, both freehold and copyhold, expressed to be hereby granted and released, and covenanted, to be surrendered respectively, with their and every of their appurtenances, subject as aforesaid, to the use of the said *I. S.* and *I. M.* their heirs and assigns, for ever, upon the trusts, and for the intents and purposes hereinbefore expressed and declared, concerning the same, or unto, or to the use of, the person or persons who shall purchase the same premises, and of his, her or their heirs and assigns, as by any person or persons interested in that behalf, or by his, her, their, or any of their heirs or assigns, shall be reasonably advised and required. *Provided always*, and it is hereby declared and agreed, by and between all the said parties to these presents, that in the mean time, and until default shall be made in pay-

Provido
that mort-
gagor
shall en-
joy until

ment of the said sum of ——— and interest, default in payment. or any part thereof, at the time and in manner aforesaid, it shall be lawful for the said *L. I.* his heirs and assigns, from and after the decease of the said *R. R.* to receive and take the rents, issues and profits, of the said freehold and copyhold premises respectively, to and for his, her and their, own proper use and benefit, without any lawful let, suit, denial or interruption, of, from, or by the said *I. S.* and *I. M.* or either of them, or of their heirs or assigns, or any of them. *Pro-* Power of appointing new trustees.
vided always, that in case the said *I. S.* and *I. M.* or either of them, or any new trustee to be appointed, as after mentioned, shall depart this life, or be desirous of being discharged from the afore-mentioned trusts before the same shall be performed, then and in every such case, it shall be lawful for the said *B. H.* his executors, administrators or assigns, to nominate any fit person to supply the place of the trustee so dying, or desirous to be discharged; and, immediately after such appointment, the said trust, estate and premises, shall be conveyed to the use of such new trustee or trustees, jointly with the surviving and continuing trustee, or solely, as the case may be, and of their heirs or assigns, *Upon* the trusts hereinbefore expressed; and every such new trustee shall and may have and exercise the same powers, privileges and authorities, as if he had been by these presents appointed for that purpose. *Provided* Usual provisoes and indemnifications in respect to the trustees
also, that the said *I. S.* and *I. M.* and such new trustees as aforesaid, and their respective heirs, executors and administrators, shall be chargeable only with and for such money as they shall, respectively, actually receive, by virtue of the trusts in them reposed. *And*

that no one of them shall be answerable or accountable for any other of them, but each of them for his own acts, deeds, neglects and defaults only notwithstanding their joining in any receipt, for the purpose of conformity only; nor shall either or any of them be answerable or accountable for any banker or other person with whom, or in whose hands, any part of the said trust money, arising from these presents, shall be deposited for safe custody; nor for any loss or damage which may happen to the said trust money, or any part thereof, by any other means, except the same shall happen by or through their own wilful defaults. *And also*, that each of them the said trustees, and their respective heirs, executors and administrators, shall and may, out of the said trust presents, or the rents, issues, and profits thereof, or the purchase-money aforesaid, deduct to himself, and shall and may allow to his co-trustee or co-trustees, all such costs, charges, damages and expences, as they respectively shall or may sustain or be put unto, in or about the execution of the trusts of these presents, or any of them, or any way relating thereto. *In witness, &c.*

¶ With respect to the two last precedents (though cases may be found whose peculiar circumstances shall induce us to adopt the plan of security thereby suggested,) it ought to be observed, that such securities are not intitled to a benign interpretation, as obviously bearing the uninviting complexion of severity and imposition.

As to clauses in general, affecting to enable mortgagees to sell absolutely in default of payment, they are, abstracted from the preceding observation,

discountenanced as incompetent to reach the object of the parties—not making the conveyances operate farther than mortgages, which they would do without them; for, upon default of payment at the time appointed, the estate becomes in law absolutely the mortgagee's, and the power to sell can give him no greater interest than making it absolutely his own; and as the estate is redeemable in equity in the one case, I do not see why it is not equally so in the other. The rule is once a mortgage, always a mortgage; and that an estate cannot be a mortgage at one time, and at another time cease to be so, by one and the same deed.

I have therefore given the power in the present instance by a separate instrument.

** Mortgage of a bond.*

THIS Indenture made, &c. between *A. B.* of, &c. of the one part, and *C. D.* of, &c. of the other part. *Whereas*, by a certain bond or obligation, bearing date, &c. *E. F.* and *G. H.* became bound to the said *A. B.* in the penal sum of ——— with a condition thereunder written, for making void the same on payment of ——— and the interest thereof, to the said *A. B.* his executors, administrators or assigns, at the time therein for that purpose mentioned and since past. *And whereas* the said principal sum of ——— still remain due and owing to the said *A. B.* on or by virtue of the said recited bond, and the said *A. B.* having occasion for the sum of ——— hath applied to the said *C. D.* to advance and lend him the same, on the security of an assign-

Recites a bond.

And that money is still due thereon.

And that mortgagee has agreed to advance money upon the assignment thereof.

Assignment

Trusts.

ment of the said bond and the money thereby secured, which he the said *C. D.* hath agreed to do. *Now this Indenture witnesseth*, that for and in consideration of the sum of ——— of, &c. to the said *A. B.* in hand paid by the said *C. D.* at or before the sealing, &c. the receipt of which he the said *A. B.* doth hereby acknowledge and thereof, &c. *He* the said *A. B.* hath bargained, sold, assigned, transferred and set over, and by these presents doth bargain, &c. unto the said *C. D.* his executors, administrators and assigns, the said principal sum of ——— so secured by the said recited bond as aforesaid, and all interest for the same now due and owing and hereafter to become payable; and all the right, title, interest, property, claim and demand, whatsoever, both at law and in equity, of him the said *A. B.* of, in and to the same and every part thereof respectively, together with the said bond and the benefit thereof, *To have, hold, receive, perceive, and take* the said principal sum of ——— hereby assigned, and the interest thereof, due and to become payable, and every part thereof respectively, unto and by the said *C. D.* his executors, administrators and assigns. But nevertheless upon the following trusts; (that is to say) *upon trust*, in the first place, with and out of the same to retain and discharge the sum of ——— so advanced and lent by the said *C. D.* as aforesaid, together with lawful interest for the same, to be computed from the day of the date of these presents. And from and after payment and discharge of the said principal sum of ——— and interest thereof, as aforesaid, upon trust to render and pay all the surplus and residue of the said principal sum of ——— and the interest thereof, unto the said

A. B. his executors, administrators or assigns, for his and their own use and benefit. *Pro-* Provido for redemption *vided always*, that if the said *A. B.* his heirs, executors or administrators, do and shall, within the space of ——— days next ensuing the date of these presents, pay or cause to be paid to the said *C. D.* his executors, administrators or assigns, the said sum of ——— together with such interest for the same as aforesaid. Then and in such case these presents, and the assignment hereby made, and every clause, matter or thing, herein contained, shall cease, determine, and be utterly void, to all intents and purposes whatsoever. And the said *A. B.* doth hereby irrevocably Power of attorney. make, nominate, appoint, and in his stead and place, put the said *C. D.* his executors, administrators and assigns, his true and lawful attorney and attornies, for him the said *A. B.* and in his name, but upon the trusts aforesaid, to ask, demand, recover and receive, of and from the said *E. F.* and *G. H.* and of and from all and every person and persons liable to pay the same, the said sum of ——— hereby assigned, and the interest thereof due and to become payable; and, on receipt thereof, or of any part respectively, for him the said *A. B.* and in his name, or in the name or names of him the said *C. D.* his executors, administrators or assigns, to give, sign and execute, any receipt or receipts, acquittance or acquittances, release or releases, or other discharge or discharges for the same; and on payment thereof, or of any part thereof respectively, for him the said *A. B.* and in his name to bring, commence, carry on and prosecute, any action or actions, suit or suits, or other proceedings whatsoever, relative to the receipt or recovery of the said

principal sum of ——— and the interest thereof, and of every part thereof respectively, as full and absolutely, to all intents and purposes, as he the said *A. B.* might or could do in his own proper person, (*Covenants from A. B. for payment of the money and for further assurance.*)

Of PARTITION.

A Partition is the severance and division of lands, &c. held in joint-tenancy, coparcenary, or in common; by which each may hold a separate and distinct part. The only observation that it appears material to make on this head, previous to the insertion of the forms of instruments by which partition may be effected, is, that as in all these species of tenants, viz. joint-tenants, coparceners, and tenants in common, there is a unity of possession; it is necessary that they all mutually convey and assure to each other the several estates which they are separately to take and enjoy. See *Noy Max.* p. 46. 49. 1 *Blac. Com.* 163. 2 *ibid.* 180, 188, 192, 208.

Deed of partition of freeholds and copyholds.

THIS indenture of five parts, made, &c. between *H. G.* of, &c. one of the two sons of *G. G.* and *E.* his wife, formerly *E. L.* both deceased, of the first part, *I. G.* of, &c. the other of the two sons of the said *G. G.* and *E.* his wife, of the second part, *M. B.* of, &c. a trustee for the said *H. G.* and *I. G.* of the third part, *C. P.* of, &c. Esq; of the fourth part, and *I. N.* of, &c. Gent. of the fifth part. (*Reciting a mortgage by demise, and further mortgage which is still subsisting.*) And whereas, in and by certain indentures of lease and release, bearing date, &c. the release being tripartite, and made between the said *H. G.* and *M.* his wife, and *J. G.* and *E.* his wife, of the first part, the said *M. B.* of the second part, and *E. D.* Gent. of the third part. And by virtue of a common recovery duly suffered in pursuance of a covenant in the said indenture of release, contained, the said several messuages, or tenements and hereditaments, were discharged from all estates-tail therein, and were assured and limited, as, to, for, and concerning one undivided moiety, or one half part, the whole into two equal parts to be divided, of all and singular the said messuages, cottages, tenements, lands, hereditaments and premises, to the use and behoof of the said *H. G.* and *M. B.* and the heirs and assigns of the said *H. G.* nevertheless as to the estate of the said *M. B.* in trust to and for the said *H. G.* his heirs and assigns, and as to, for and con-

Recites lease and release and recovery whereby freehold premises are limited,

As to a moiety,

In trust for H. G.

And as to
the other
moiety in
trust for
J. G.

cerning the other undivided moiety or one half part of the same several premises, to the use and behoof of the said *J. G.* and *M. B.* and the heirs and assigns of the said *J. G.* nevertheless as to the estate of the said *M. B.*

in trust to and for the said *J. G.* his heirs and assigns, and to and for no other use, &c. as in and by &c. will appear. *And whereas* the said

H. G. and *J. G.* by means aforesaid and otherwise, are seized and possessed in equal undivided moieties as tenants in common, not only of the said several freehold messuages, cottages, lands, tenements and hereditaments aforesaid and hereinafter mentioned to be granted and released, but also in a certain customary messuage or tenement in three dwellings, situate in *S.* aforesaid, and holden of the manor of *C.* by copy of court roll, at the will of the lord, according to the custom of the said manor, and yearly rent of — and being so seized and entitled, have this day mutually concluded and agreed to make partition between them of the said several messuages, lands, tenements and hereditaments hereinbefore mentioned, both freehold

And that
H. G. and
J. G. are
also inti-
tled to co-
pyhold es-
tates,
which
with the
freeholds
they have
agreed to
make par-
tition of,
&c.

and copyhold, and in order thereto, they the said *H. G.* and *J. G.* with the assistance of their friends and neighbours, have divided as well such freehold and copyhold lands and premises into two equal parts or shares, and one of such parts or shares (to wit) two messuages, &c. in *C.* one other messuage and garden, &c. in *S.* aforesaid, two acres, &c. and two pieces of meadow, &c. and which said several parcels and premises have been valued and agreed on by and between the said parties, and are by them set at the sum of — and are allotted and intended to be hereinafter limited in use to the said *H. G.* by

agreement of the said parties as the moiety, part and share of the said *H. G.* of the said messuages, &c. so agreed and intended to be divided, and to be held in severalty by him as aforesaid; and that all the aforesaid messuage, farm, &c. in *E.* and *L.* and messuage, farm, &c. in *C.* and the customary or copyhold messuage, &c. hereinafter covenanted and agreed to be surrendered, are likewise valued at and agreed on by and between the same parties to be of the value of ——— subject to a deduction of ——— for the principal of the said mortgage debt, due to the said *F. A.* and which reduces the same to the sum of ——— and is allotted and hereinafter limited or agreed to be surrendered to said *J. G.* and his heirs, and which, by the said agreement of the said parties is the moiety, part and share of the said *J. G.* of and in the messuage, &c. as well copyhold as freehold, so agreed and mentioned to be divided and to be held in severalty as aforesaid. *And whereas* the value of the premises so allotted to the said *H. G.* after such deduction as aforesaid exceeds those allotted to the said *J. G.* in the sum of ——— it is therefore agreed that the said *H. G.* shall pay to the said *J. G.* the sum of ——— for equality of partition. *Now this indenture witnesseth*, that in pursuance of the said agreement, and in order to perfect the partition and agreement so made as aforesaid, and to the end that each of the said parties, their heirs and assigns, may hold and enjoy for ever hereafter in severalty and distinct from each other the said hereditaments and premises allotted to them; and in consideration of the sum of ——— of &c. to him the said *J. G.* in hand, well and truly paid by the said *H. G.* at or before the sealing and delivery hereof, for equality

That a sum
of money
shall be
paid by one
for equality
of partition

Considera-
tion.

Bargain
and sale by
trustee.
Grant and
release by
partitionists

of partition, the receipt, &c. and of 10s. to the said *H. G.* *J. G.* and *M. B.* paid by *C. P.* the said *M. B.* by the direction and appointment of the said *H. G.* and *J. G.* (testified by their being parties to and sealing and delivering of these presents) *Hath* bargained, sold, and released, and by these presents *Doth* bargain, &c. and the said *H. G.* and *J. G.* *have* and each of them *hath* granted, bargained, sold, aliened, released, and confirmed, and by these presents *do*, and each of them *doth* fully and absolutely grant, &c. unto the said *C. P.* (in his actual possession, &c.) and to his heirs and assigns, *all those* two several messuages, &c. all which said last hereinbefore granted and released premises, with their appurtenances is the lot, moiety, part and share of the said *H. G.* of and in the said premises so agreed to be divided as aforesaid, and to be for ever hereafter held by him and his heirs in severalty as aforesaid; *and also* all that messuage, &c. and which said several last hereinbefore mentioned to be granted and released messuage, &c. with their and every of their appurtenances, together with the said copyhold premises, is the lot, moiety, part and share of the said *J. G.* of and in the said hereditaments agreed and intended to be divided and to be for ever hereafter held by him the said *J. G.* and his heirs in severalty as aforesaid; and also all houses, &c. and the reversion, &c. and all the estate, &c. *To have and to hold* the said several messuages, &c. hereinbefore mentioned and intended to be hereby granted and released, with their and every of their appurtenances unto the said *C. P.* his heirs and assigns, upon the trusts and to and for the uses, intents and purposes hereinafter limited expressed and declared, of as to a part, and concerning the same, that is to say, as to

for and concerning all that the aforesaid messuages, &c. hereinbefore mentioned to be the lot and part of the said *H. G.* and his heirs, with their and every of their appurtenances, unto them the said *H. G.* and *C. P.* their heirs and assigns, to the only sole and proper use, benefit and behoof of the said *H. G.* and *C. P.* and the heirs and assigns of the said *H. G.* for ever, to be held in severalty as aforesaid, as the full moiety, lot, part and share of the said *H. G.* and his heirs, of and in all and every the aforesaid messuage, &c. as well copyhold as freehold, so agreed to be divided as aforesaid, nevertheless as to the estate of the said *C. P.* and his heirs in trust for the said *H. G.* and his heirs and assigns, and to and for no other use, &c. and as to, for and concerning the said last hereinbefore mentioned messuage, &c. and all and every other the freehold messuages, &c. hereinbefore mentioned to be the lot and part of the said *J. G.* and his heirs, with their and every of their appurtenances unto them the said *J. G.* and *J. N.* their heirs and assigns, to the only proper use, benefit and behoof of them the said *J. G.* and *J. N.* and the heirs and assigns of the said *J. G.* for ever, to be held in severalty as aforesaid, and which, together with the aforesaid copyhold, &c. hereinafter covenanted to be surrendered, is the full moiety, lot, part and share of the said *J. G.* of and in all and every the aforesaid messuages, &c. as well freehold as copyhold so agreed to be divided as aforesaid, nevertheless as to the estate of the said *J. N.* and his heirs in trust for the said *J. G.* and his heirs as aforesaid, and to and for no other use, &c. And the said *H. G.* for the consideration aforesaid, and in order to perfect and complete

In trust for
H. G.
And as to
other part

In trust for
J. G.
Covenant to
be admitted
to the copy-
hold.

and surren-
der the
same to J.
G.

such partition, doth hereby for himself, his heirs and assigns, covenant, promise and agree to and with the said J. G. his heirs and assigns, that he the said J. G. his heirs or assigns, shall and will, at the next court baron to be held for the said manor of C. procure him and them to be admitted tenant, according to the custom of the said manor, to an undivided moiety of all and every the said customary or copyhold messuages, &c. with the appurtenances; and the said H. G. and E. his wife, his heirs and assigns, shall and will immediately at the same court, at the proper costs and charges of the said J. H. his heirs and assigns, surrender or cause to be surrendered into the hands of the lord or lords of the said manor, according to the custom of the said manor, such customary or copyhold messuage, with the appurtenances, to the use and behoof of him the said J. G. his heirs and assigns for ever, to the intent that he the said J. G. may be admitted tenant thereto, to hold to him and his heirs for ever, according to the custom of the said manor. (*Covenant from the trustee that he has not incumbered, with reciprocal covenants from the partitionists for the title, &c.*) In witness, &c.

** Partition of partnership effects, and dissolution of the partnership.*

THIS indenture, made, &c. between, &c. Whereas, &c. (*Reciting the articles of copartnership.*) And whereas the said B. H. and C. B. have mutually agreed, and do thereby mutually agree to determine and dissolve the said co-partnership, and the same is by these presents absolutely determined and

dissolved in manner as herein after is mentioned: The said *C. B.* for and in consideration of the covenant and agreement herein after contained, on the part and behalf of the said *B. H.* his heirs, executors, and administrators, to be done and performed, doth hereby covenant, promise, and agree, to and with the said *B. H.* his executors and administrators, that he the said *B. H.* his heirs, administrators, and assigns, shall from henceforth be intitled to have, receive, and take all and every the messuages, lands, tenements, hereditaments and premises, with the appurtenances, and all and every the stock in trade, cash, debts, sum and sums of money, goods, chattels, estate and effects whatsoever, wheresoever, and of what nature and kind soever, against him the said *C. B.* his executors and administrators, to and for the absolute use and behoof of the said *B. H.* his heirs, executors, administrators, and assigns, subject, nevertheless, to the debts due, owing from and by the said copartnership, between the said *B. H.* and the said *C. B.* And also at the expence of him the said *B. H.* his executors and administrators, the name of him the said *C. B.* shall at all times hereafter be made use of for the recovery of all or any part of the copartnership debt and stock in trade, with the interest and increase thereof, subject as aforesaid, to the absolute use and behoof of the said *B. H.* his executors, administrators, and assigns, as by his or their counsel learned in the law shall be advised. And also that the said *C. B.* his executors, and administrators, shall and will at all and every time and times hereafter, upon the request and at the costs of the said *B. H.* his executors, and administrators, both in and

out of any court of law or equity, do all and every such act and acts, as by the said *B. H.* his executors and administrators, or any of their counsel learned in the law shall be reasonably advised and required for fulfilling and accomplishing these presents. And the said *B. H.* for and in consideration of the covenant and agreement herein contained, on the part and behalf of the said *C. B.* his executors and administrators, to be observed and performed, *Doth* hereby covenant and agree to and with the said *C. B.* his executors and administrators in manner and form following, that is to say, that he the said *B. H.* his executors and administrators, shall and will on request, seal, deliver, and execute, to the said *C. B.* his executors, administrators and assigns, one bond or obligation in the penal sum of £—— with a condition to be therein inserted for payment to the said *C. B.* his executors, administrators, and assigns, of all and every sum and sums of money as any two persons to be indifferently named by them the said *B. H.* and *C. B.* conversable and acquainted with the business of the —— trade, shall by their award in writing, under their hands and seals, and at the time and place therein for that purpose to be mentioned, award, order, and direct to be paid by the said *B. H.* his executors, or administrators, to the said *C. B.* his executors, administrators and assigns. And if such arbitrators shall not make such their award in writing within one month from the time of such nomination, that then the said arbitrators shall within the space of six days after the expiration of the said one month, elect, nominate, and appoint a third person by way of umpire for the purpose aforesaid, and which said umpire shall within fifteen days after he

shall be so nominated and appointed, make and deliver award or umpirage in writing, under his hand and seal of and concerning all and every such sum and sums of money as he shall therein direct to be paid by the said *B. H.* his executors, administrators and assigns, and the said award, or umpirage, when so made, shall be duly observed, kept, and performed by the said parties hereto, their executors and administrators, according to the true intent and meaning thereof: *And further*, that they the said parties hereto, and each of them, both in and out of any court or courts of law or equity, respecting the measures aforesaid, and at the costs and charges of the said *B. H.* shall and will do all and every act and acts as by their or either of their counsel shall be advised and required for the fulfilling and accomplishing of these presents. *In witness, &c.*

Of PARTNERSHIP.

PARTNERSHIP (more usually denominated a Copartnership) may be defined to be an agreement between two or more persons, for dividing the produce of mercantile or other concerns, in proportion to the capital or labour contributed by each; and in order to constitute a legal and valid partnership, it is necessary that the parties should share in "all risques of profit

Of PARTNERSHIP.

and loss." *Doug.* 371. which seems to be the only *essential* to this species of contract. The provisions which it has been found *expedient* to insert in deeds of co-partnership, will be found in the following precedents of those instruments.

Note. The form of dissolution of co-partnership is inserted *ante*, p. 90.

**Articles of copartnership between an apothecary and a surgeon and man midwife.*

Articles of agreement indented, had, made, entered into, and agreed upon, this — day of — &c. between *A. B.* of, &c. apothecary, of the one part, and *C. D.* of &c. surgeon and man midwife, of the other.

WHEREAS the said *A. B.* hath for many years past carried on the business of an apothecary in the house he now lives in, in ———— aforesaid, and the said *C. D.* is a surgeon and man midwife, and it hath been agreed between them to enter into copartnership together in their respective professions, and to hold, enjoy, receive, and take the profits thereof jointly, in manner hereinafter mentioned. *Now these presents witness,* that the said parties to these presents, as well in consideration of the trust and confidence which they repose in each other, as for the improvement and augmentation of their respective fortunes, do for themselves, and their several and respective executors and admini-

strators, mutually and reciprocally covenant, promise and agree to and with the other of them, his executors and administrators, by these presents, that they the said parties to these presents shall and will become and continue copartners in their respective professions for the term of seven years to be computed from the ——— day of this present month of ——— if they the said parties shall so long live, and for such further term as they the said parties shall agree, upon the terms and conditions hereinafter mentioned; and that the said parties shall severally exert the utmost of their abilities in promoting the interest, welfare and credit of the said copartnership; and the said *C. D.* doth covenant, promise and agree to and with the said *A. B.* his executors and administrators, by these presents, that in the event of his the said *C. D.* being admitted a partner with the said *A. B.* as aforesaid, he the said *C. D.* his executors or administrators shall and will well and truly pay, or cause to be paid to the said *A. B.* his executors, administrators or assigns, the sum of ——— at the times and in manner following, that is to say, the sum of ——— part thereof on or before, &c. and the like sum of ——— residue, on or before, &c. if the said *A. B.* and *C. D.* shall be then living but not otherwise. *And also* that the said *C. D.* his executors and administrators shall and will, within the space of six calendar months, to be computed from the day of the date of these presents, pay or cause to be paid to the said *A. B.* his executors, administrators or assigns, one moiety or half part of the amount or value, to be settled by a fair appraisement, of the present fixtures and stock in trade of or belonging to the shop of the said *A. B.* in ——— aforesaid, and that thereupon the

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said *C. D.* shall become intitled to a moiety of such fixtures and joint stock ; and likewise that he the said *C. D.* shall and will from time to time, during the continuance of the said copartnership, pay or allow to the said *A. B.* at the rate of — a year for his board and lodging, to be deducted out of his moiety of the profits of the said copartnership, if the same shall be sufficient for that purpose, otherwise out of his own proper monies ; and that all expences for the wages or board of any servant or servants, and of all coals, candles, and other things, and the rents, taxes, and other charges of the present or any other house or houses, shop or shops, which may be used for the carrying on the business of the said copartnership, and of all additional stock in trade that may from time to time be necessary to be brought into or used in the said business or copartnership, shall be paid out of the profits and increase thereof equally by the said parties ; and that all profits and gains to arise or accrue from or in respect of the business of the said copartnership, shall be shared and divided between the said parties to these presents, in equal shares and proportions ; and the said parties shall equally bear and sustain all losses and damages which shall happen to be occasioned in carrying on the said business, or by servants or otherwise ; and that proper books of account shall be kept, in which shall be fairly and regularly entered, all the accounts, transactions, and particulars of or relating to the said copartnership, to which books of account each of the said parties shall from time to time have free access, and be at liberty to make copies of, or extracts from the same ; and that the said *B.* and *D.* jointly ; and that neither of

the said parties shall undertake any affair of moment, or enter into or engage in the same or any other trade or business with any person or persons whomsoever, or enter into any statute, recognizance, judgment, bond, note or security, or become bound or bail, with or for any person or persons whomsoever, or absent himself from the business of the said copartnership, without the consent of the other of them in writing for that purpose first had and obtained, and that the said parties shall once in six months, or oftener if thereunto required by the other of them, settle the accounts of or relating to the said copartnership; and upon every such settlement, it shall be lawful for each of the said parties to take out of the cash of or belonging to the said copartnership, such sum or sums of money as they shall agree upon for their respective use and benefit; and that within one month, or as soon as may be after the determination of the said copartnership, a general and final account shall be made out and signed by the said parties, of the stock in trade, effects, money, debts and credits of or belonging to, or owing to the said copartners or either of them, for or in respect of the said copartnership, and all the monies so due or owing from them or either of them, shall be forthwith paid and satisfied out of the monies and effects of or belonging to the said copartnership; and after such payments or satisfaction made, all the remainder of the said monies, debts and effects, shall be divided between the said parties, in equal shares and proportions; and that if there should be any deficiency of effects to answer the debts to be due or owing on the said copartnership account, the same shall be made good by the said parties in like

manner in equal proportions ; and that neither of the said parties shall, without the consent of the other of them in writing for that purpose first obtained, assign or make over his interest in the said copartnership to any other person or persons whomsoever ; and that if either of the said parties shall die during the said copartnership, no benefit of survivorship shall accrue unto or be had or taken by the survivor of them relating to the stock or effects of or belonging to the said copartnership ; and that in case at any time after the first year of the said copartnership, the said *A. B.* shall chuse to retire from and give up to the said *C. D.* his share in the said copartnership, it shall be lawful for him so to do, and to determine the present copartnership ; and then and in such case the said *C. D.* doth for himself, his executors and administrators, covenant, promise and agree to and with said *A. B.* his executors and administrators, that he the said *C. D.* shall and will from time to time, during the natural lives of him and the said *C. D.* pay or cause to be paid to the said *A. B.* or his assigns, one annuity or yearly sum of £ — clear of all deductions whatsoever, by quarterly payments, and that the said *C. D.* shall and will enter into and execute unto the said *A. B.* a bond in a sufficient penalty for the payment thereof, and a warrant of attorney to confess a judgment on the said bond, and that then and in such case the said *C. D.* his executors and administrators shall and will pay, or cause to be paid to the said *A. B.* his executors, administrators, and assigns, a moiety of the amount of or value of the fixtures and stock in trade at which the same shall then be valued and appraised by two indifferent persons, one to be named by each

of the said parties ; and that if any dispute or difference shall happen or arise between the said parties, their respective executors or administrators, touching the construction of these presents, or any of the clauses or agreements herein considered, the same shall be referred to the arbitration of two indifferent persons, the one to be chosen by the said *A. B.* his executors or administrators, and the other by the said *C. D.* his executors or administrators, and if such two persons cannot agree on their award, the same shall be finally settled by the umpirage of a third person to be chosen by such two persons for that purpose ; and in default of the observance and performance of the several articles and agreements hereinbefore contained on the respective part of him the said *A. B.* his executors and administrators, to be observed and performed, he the said *A. B.* doth for himself, his heirs, executors and administrators, covenant, promise, and agree to and with the said *C. D.* his executors and administrators, that he said *A. B.* his executors and administrators shall and will well and truly pay, or cause to be paid unto the said *C. D.* his executors and administrators, the sum of £—— of, &c. and in like manner in default of the observance and performance of the several covenants and agreements hereinbefore contained, on the part of the said *C. D.* to be observed and performed, he the said *C. D.* for himself, his heirs, executors, and administrators, doth covenant, promise and agree with the said *A. B.* his executors, administrators, or assigns, that he the said *C. D.* his executors or administrators, shall and will well and truly pay or cause to be paid unto the said *A. B.* his executors or

administrators, the like sum of £—— of like lawful money of Great Britain. *In witness, &c.*

** Deed of copartnership between an ironmonger and founder.*

THIS indenture made, &c. between *A. B.* of &c. ironmonger and founder of the one part, and *C. D.* of, &c. ironmonger of the other part. *Whereas A. B.* and *C. D.* have carried on the trade or business of smiths, founders and ironmongers, in partnership together ever since the —— day of —— now last past, but no articles of copartnership have ever been executed between the said parties. *And whereas* the said *A. B.* and *C. D.* in consideration of the special trust and confidence they repose in each other; and in order to augment their fortunes, and for other good causes and considerations them hereunto moving, have agreed to continue partners in the trade or business aforesaid, for the term and time and upon the conditions and agreements hereinafter mentioned. *And whereas* the said *A. B.* is well and sufficiently possessed of or intitled to a certain leasehold messuage or tenement, manufactory and premises, situate and being at —— aforesaid, under and by virtue of a certain indenture of lease to him thereof granted by *E. F.* of —— for the term of —— years, commencing from, &c. subject to the payment of the yearly rent of £—— and performance of the covenant in the indenture of lease thereof granted, and which said messuage or tenement, manufactory and premises, it hath been agreed by and between the said parties to these presents, shall be and

become the joint and equal property of both the said parties to these presents, wherein the said trade or business shall be carried on. *Now this indenture witnesseth*, and each of them the said parties for himself severally, and for their several executors and administrators *doth* covenant, promise, agree, and declare to and with the other of them, his executors and administrators by these presents in manner following: that is to say, that they the said *A. B.* and *C. D.* became and continued copartners together, and shall and will continue copartners and joint dealers together, in the trade and business of smiths, founders, and ironmongers in buying, manufacturing, and selling all sorts of goods incident to the said trade for and during and unto the full end and term of ——— years, to be computed from the said ——— day of ——— now last past, determinable in such manner as is hereinafter particularly mentioned under and according to the conditions, provisions, and terms of agreement hereinafter mentioned. *And* for the more effectual carrying on the said joint trade or business, they the said parties have mutually agreed to bring in and make up, and have accordingly paid in and put together a capital joint stock of £—— consisting of the several particulars inserted in an account thereof subscribed by both the said partners in the proportions following: (that is to say) the said *A. B.* the sum of £—— and the said *C. D.* the sum of £—— and which with the sum of £—— more which it is hereby agreed and declared by and between the said parties hereto shall be put and paid by the said *C. D.* into the said joint trade, as the same may be necessary or required, shall be the capital or joint stock em-

ployed in this partnership. *And* it is hereby agreed and declared by and between the said parties hereto, that each of them shall receive interest after the rate of five *per cent. per ann.* for so much and such part of the said capital or joint stock as each party hath or shall respectively put therein: and it is hereby also agreed and declared by and between the said parties to these presents, that each of them the said parties shall and may yearly and every year, take and receive by and out of the profits of the said trade, interest after the rate of five *per cent. per ann.* for so much and such part of the said capital or joint stock as each party shall respectively put therein, and from and after full payment and satisfaction thereof and of so much and such part of the said capital stock as either party shall have therein more than the other, to such party who shall have more than the other in such capital stock, so as to make each party's share of the capital or joint stock equal with the other of them, then that the residue of the said capital stock, and all the profits and interest of the said partnership trade, and all losses attending the same, shall be from time to time, during the continuance of this co-partnership, divided in two equal parts, one of which two parts the said *A. B.* his executors and administrators shall be intitled to have and receive, and shall and will bear one moiety or half part (the whole into two equal parts to be divided) of all debts and losses which shall from time to time be incurred by or happen in or to the said partnership trade; and that the remaining half part, or share of such stock, profits, and interest the said *C. D.* his executors and administrators shall be intitled to have and receive, and shall and will

bear and pay one moiety or half part of such debts and losses as aforesaid. *And* it is also agreed by and between both the said parties to these presents, that the said partnership trade shall, during the continuance of this copartnership, be carried on and exercised in the messuage or tenement, manufactory and premises situate in _____ aforesaid, and the warehouses thereto belonging, and also in the lower part of a certain messuage or tenement and premises, situate in _____ in the parish of _____ in the said county of Middlesex, now rented by them the said *A. B.* and *C. D.* as tenants at will, or in such other house or houses as the said partners shall at any time, during this copartnership, mutually agree upon. *And* that the whole yearly rents of the said several messuages or tenements, manufactory, warehouses, and premises, situate and being in _____ aforesaid, together with all parish taxes and repairs, during all such time as the said joint trade and manufactory shall be carried on in the premises, *And also* the rent or yearly rent of any other house or warehouse, which they the said parties shall mutually agree to take and hire at any time or times hereafter, during the said copartnership, together with all taxes, repairs and charges attending the same, *and also* all servants wages and other petty expences incident to the carrying on the said joint trade and manufactory, shall be borne and defrayed out of the said joint stock. *And* it is further agreed by and between the said parties to these presents, that the said copartnership shall be managed and carried on; and all purchases, sales, bills of parcels, bonds, notes, letters, bills, receipts, payments, contracts, securities, dealings, and transactions

which shall be made, given or taken for any matter or thing concerning the same, shall from time to time be so had, taken, and exercised and entered into in the sole name of the said *A. B.* And also that all goods, wares, and merchandizes, monies, payments, and securities, bought, sold, received, and paid, given and taken, and all dealings in general relating to the said joint trade and manufactory, shall from time to time be daily charged and entered by parties in proper books for that purpose, to be provided out of the said joint stock (in such manner as other persons of the same business usually do or ought to do) whereby the fair and clear account of the said joint trade, and the true state thereof may appear; and in particular, that a book shall be kept for the entry of the account of cash to be received and paid on account of the said joint trade; and that all such books of account, and all bonds, bills, notes, and securities, and all accounts, evidences and writings relating to this copartnership, shall be kept in the same place or places within or adjoining to the shops where the said partnership shall from time to time be carried on and managed, whereto each of the said partners shall be at liberty to resort at all times, and to have the sight, perusal and examination thereof, and to take copies or extracts of all or any part thereof, without any let or denial whatsoever; and that neither of the said parties shall secrete or remove any of such books, securities, evidences or writings as aforesaid. And for the more orderly carrying on the said joint trade, &c. it is also agreed by and between both the said parties to these presents, that the said *A. B.* shall not nor will in anywise deal or trade in the business of a smith, founder, and

ironmonger, or in any other business whatsoever, during this copartnership, other than for their mutual benefit and advantage, but that the said *C. D.* shall not be restrained from the exercise of any other trade whatsoever, and it is hereby further declared and agreed that each of them shall from time to time, and at all times during the continuance thereof, be just, true, and faithful to each other in all their transactions, accounts, and dealings, concerning or relating to the said partnership, and shall severally endeavour by their utmost skill, care, and diligence, to advance and promote the same, and particularly it is hereby agreed and declared, by and between both the said parties to these presents, that the said *A. B.* shall, and he doth hereby declare and agree that he will from time to time, and at all times hereafter during the residue of the said copartnership term of — years, employ and devote his whole time and attention solely to the said joint trade or business, and use his utmost skill, care, diligence and attendance to advance and promote the same, and to the utmost of his ability, and in as extensive a manner as may be, in consideration whereof he shall be allowed to receive and take for such attention and care, and devoting his time to the said trade or business, out of the profits of the said joint trade, the clear yearly sum of £ — of lawful money of Great Britain, by even and equal quarterly payments in every year, over and above and exclusive of any other profits therefrom, and previous to his division of profits between the said parties as hereinbefore mentioned. And it is hereby also agreed to and between the said parties, that the said partnership estate or effects shall not at any time be at-

tached, seized, or extended, charged, or incumbered with, or for any private or particular debt or duty of either of the said parties, but that such private debt shall from time to time be borne, paid, and discharged by the party charged therewith out of his particular estate, not included in the said partnership. *And further*, that neither of the said parties shall or will, without the consent of the other of them, take out or employ for his own particular use or occasions, any money, securities, or goods belonging to the said joint stock, at any time during the continuance of the said copartnership, other than and except the sum of £—— hereby agreed to be taken out yearly by each of them the said parties, from and after the —— day of —— until the expiration of this copartnership, and the annual sum of £—— hereby agreed to be given, paid, and allowed to the said *A. B.* from the commencement of this copartnership until the expiration thereof, for the causes and considerations before expressed. *And in case* either of the said parties shall at any time or times during the continuance thereof, without the consent of the other of them, take out of the said joint stock, any other sum or sums of money than as aforesaid, and as hereinafter mentioned, then the party or parties so taking out the same shall be answerable or accountable to the said copartnership estate for so much money as he shall so take thereout without such consent as aforesaid, and the share of the party of and in the said joint estate shall be subject and liable to make good the same, with interest, at 5*l. per cent. per ann.* *And it is also agreed by and between the said parties to these presents*, that it shall and may be lawful to and for either of them the said

parties at any time during this copartnership, by and with the consent of the other of them, to lend and put out into the said joint stock, any sum or sums of money whatsoever, for the advancement of the said trade or business, and at any time afterwards to have leave to take the same or any part thereof out again, giving ——— months notice in writing to the other of them of the same. *And* that if either of them shall at any time or times so lend any sum or sums of money to the said joint trade, the same shall be immediately entered in the cash book of the said copartnership as a debt owing to the party so lending the same. *And* it is also agreed by and between the said parties, that the said capital stock and the profits thereof, shall be chargeable with and liable to make good the monies so to be by any of them lent, together with interest for the same, after the rate of £ ——— *per cent. per ann.* *And* it is also agreed by and between the said parties, that neither of them shall at any time during the said copartnership, sell or deliver upon credit or lend any money, securities, goods or wares, belonging to the said copartnership estate, to any person or persons whomsoever, whom the other of them shall by writing under his hand caution or forewarn the other of them not to trust. *And* if after such warning given, either of the said copartners shall sell, lend or credit any of the said joint stock money, securities or goods as aforesaid, contrary to such caution or warning, then the debt or debts so made thereby, shall be charged in the said partnership books upon the party so lending or trusting the same, who shall bear the loss (if any happen thereby) and make good or pay the same to the said joint stock, within ——— months next after

after the delivery thereof or trusting thereof, nor shall any of them compound with any person or persons whomsoever, for any debt or debts which shall at any time or times during the continuance of the said partnership, arise or grow due to the said joint trade, for any less sum or sums of money than the whole of such debt or debts (usual and reasonable abatements only excepted) nor sign any bankrupt's certificate, or any letter of licence, release, or other instrument in writing, whereby any sum or sums of money due or to grow due to the said joint trade may be lessened, delayed in payment, or discharged without the consent of the other of the said parties for that purpose first had and obtained. *And it is further agreed that the said A. B. shall not at any time during the continuance of this copartnership, or before a final account and partition made and perfected according to the true intent and meaning of these presents, become bail or security for, with, or to any person or persons by bond, bill, note, promise or otherwise, without the consent of the said C. D. thereto first had and obtained. And if he shall become bail or security, without such consent as aforesaid, he shall forfeit and pay double the sum for which such bond, note, security, or bail shall be given or entered into, which forfeiture or forfeitures shall be paid to the said joint stock, as an addition thereto, within one month next after every such becoming bail or security as aforesaid. And likewise, that neither of the said parties shall at any time during the continuance of this copartnership, on any pretence whatsoever, separately make, give or accept, sign or execute any bond, bill of exchange, promissory note, or other instrument in writing,*

whereby the said partnership may be affected or liable to pay or answer, any sum or sums of money for which the joint stock shall not have received a valuable consideration, without the leave of the other of them in writing first had and obtained for that purpose. *Provided always*, and it is further covenanted and agreed by and between both the said parties, that if either of them shall so separately make, give, accept, sign, or execute any such bond, bill, note, or other such instrument as aforesaid, the party or parties so making, giving, accepting, signing, or executing the same, shall forthwith forfeit and pay to the other of them as much money as every such bond, bill, note, or other instrument shall be made for payment of. *And* in such case also, the said other party to whom such forfeiture shall be due, shall from thenceforth have power under his hand and seal, to dissolve the copartnership by these presents created; and the said partnership shall from the date and delivery of such instrument of dissolution, stand absolutely dissolved and determined to all intents and purposes, as if the same deed of dissolution had been executed by both the said parties, or as if the said term of — years had been compleatly elapsed or expired (any thing herein contained to the contrary notwithstanding.) *And* it is hereby also declared, that the said *A. B.* shall, during the continuance of this copartnership, and as a further compensation for his devoting his whole time and attention solely to the said trade and business, have the use and occupation of the dwelling part of the messuage or tenement, in ——— aforesaid, without paying any rent for the same, so long as he shall think proper to continue therein; but in case

he shall quit the same, then the said dwelling part of the said last mentioned house shall be let to such person or persons as the said parties shall mutually agree upon; and that all rents to be received of any such person or persons as aforesaid, shall be from time to time paid into the joint stock. *And* it is further declared by and between the said parties to these presents, that all apprentices, journeymen and servants to be employed in or about the said joint trade, shall be provided with good and sufficient board and lodging by the said *A. B.* and that he the said *A. B.* shall, during the continuance of this copartnership, be paid and allowed out of the copartnership stock and profits thereof, for the board and lodging of each apprentice and journeyman who shall dine at his table, after the rate of £—— *per annum*, and after the rate of £—— *per annum*, for the board and lodging of every porter or other inferior servant, *And also* the yearly sum of £—— for defraying the expences of entertaining the customers belonging to the said trade, which said several last mentioned sums or annual payments, he the said *A. B.* shall and may lawfully in every year take out of the said joint stock and the profits thereof, by equal quarterly payments. *And* it is also agreed, that no apprentices or servants to be taken or employed in the said joint trade during this copartnership, shall be so taken or employod without the mutual consent of both the said parties; and that all such journeymen and servants so to be taken and employed as aforesaid, shall be subject and obedient to the orders and directions of both the said parties to these presents; and that the fees and other considerations to be received with any apprentice or apprentices to be taken by such mutual consent as afore-

said, shall be forthwith paid into and made part of the said joint stock. *And* in case the said party to whom any such apprentice shall be bound, shall happen to die or be removed from the said partnership by virtue of any of the conditions herein mentioned, then or in either of the said cases, the party so dying or being removed, his executors or administrators shall have returned to him or them a reasonable part of the fee or consideration so received as aforesaid, out of the said joint stock, in order to maintain or provide the said apprentice with a new master during the remainder of his apprenticeship. *And* it is further agreed by and between the said parties to these presents, that upon the — day of — which will be in the year 1796, and so afterwards annually on the — day of — in every year during this copartnership, a general account shall be taken, settled, and stated by and between the said parties, touching the said joint trade, and the stock, increase, profits, value, and loss thereof, and likewise of all debts, and sums of money owing and payable to or by the said copartners in respect of the said joint trade; and that all and every such account and accounts, or the extracts thereof, shall from time to time be fairly written and entered into two several books to be kept for that purpose, in such manner as that such stated accounts may appear clear and intelligible; at the close of which extracts or entries in such several last mentioned books, the said parties shall severally subscribe their names, signifying their approbation and consent to, and the stating of such accounts, and each party shall have and keep one of such books so signed, in his own custody, which said accounts so passed and subscribed, shall be

binding and conclusive, and shall not be called in question, unravelled or varied, unless some error shall be discovered within two years next after the same shall be so passed and subscribed as aforesaid, to the amount of £—— and certified in writing by the party discovering the same to the other copartner. *And* it is also agreed, that upon the balancing and settling every such annual account, the net profits appearing to be gained by the said principal stock, and by the said trade, shall for the first three years of the said term, after such payments, and deductions thereout as before mentioned, be applied by them the said parties, towards increasing their said capital stock, for the joint and equal benefit of both the said parties, and afterwards shall be either applied by them for such last mentioned purpose, or divided between them the said parties in equal parts, shares, and proportions, so always as that the capital stock of the said copartnership shall at no time be reduced below the sum of £——. *And furthermore*, that within the space of twenty days next after the end or expiration of the said term of — years (if both the said parties shall then be living) or other sooner determination of this copartnership, by either of the parties making, giving, executing, or accepting any such instrument in writing as aforesaid, a final general account shall be taken, settled, entered, subscribed, and passed by and between the said parties of, for, and concerning all matters and things whatsoever, touching or relating to the said copartnership not before accounted for, in like manner and form as the aforesaid yearly accounts are or ought to be made up and settled, according to the true intent and meaning of these pre-

sents, so as that the true state and condition of the said joint stock and trade may then plainly and fully appear. *And* that as soon as such final account shall be settled and subscribed, they the said parties respectively shall, in the first place, out of the said partnership stock, estate, and effects, deduct the monies that either of them shall have lent to the said capital, together with interest for the same, after the rate of $\text{£} - \text{per cent. per ann.}$ and then the said partnership stock, estate, and effects, shall be applied to pay off the debts, which shall be then due or owing from the said parties on the said partnership account. *And* then the residue of the said partnership stock, estate and effects, shall with all possible equality and fairness, be divided between the said parties hereto, in such proportions as they respectively put and paid in, and all the outstanding debts due to the said copartnership shall, with all possible equality and fairness, be divided into two equal parts, one of which two parts shall go and belong to the said *A. B.* and the remaining part shall go and belong to the said *C. D.* to be held and enjoyed by them, their executors and administrators respectively, to their own proper use and benefit, together with all writings and securities relating to the same respectively. *And* to prevent all disputes that may happen to arise in making such division as aforesaid, it is agreed that the same shall be parted and divided in lots, in such manner as is usual between partners, and after such partition and division, each of them the said parties, and the executors and administrators of each of them shall, upon the reasonable request, and at the proper costs and charges of the other of them, by good and effectual deeds in writing, under their several hands

and seals, to contain all reasonable and usual covenants, assign to and authorise the other of them, his executors, administrators, and assigns to recover and receive, acquit, and discharge all and every the debts which, upon such partition and division as aforesaid, shall be to them respectively allotted; and after such partition and division, neither of them the said parties, or either of their executors or administrators shall acquit, release or discharge any debtor or debtors whose debt or debts shall be by the same partition or division assigned to the other of them, or disavow any action or suit which may be commenced for the recovery thereof. *And* it is also further covenanted and agreed by and between both the said parties to these presents, that if the said *A. B.* shall depart this life during the continuance of this copartnership, leaving a widow, child or children, or both, him surviving, no benefit or advantage shall be had or taken by the said *C. D.* by means of such survivorship, so as to enjoy, have, or claim the whole partnership estate thereby, but in such case, the said *C. D.* shall carry on the said joint trade and business upon the terms and conditions herein before mentioned, for all the residue and remainder which shall be then to come and unexpired of the said term of _____ years for the benefit of himself and such widow, child and children, or such of them as shall be living at the time of the decease of the said *A. B.* in the proportions following (that is to say) the said *C. D.* shall have and be entitled to receive four full and equal undivided fifth parts or shares of the profit of the said trade or business, and such widow, child and children last mentioned, and the survivor and survivors of them shall have and be intitled to the remaining one full

and equal undivided fifth part or share of the profits of the said trade or business, and shall and will bear and pay all the losses attending the said trade or business, if any such shall happen thereby during the same term, in the same proportions as are herein before mentioned respecting the profits of the said trade or business; and from and after the end or expiration of the said term of ——— years hereby agreed on, then a final general account shall be taken, settled and stated by and between the said *C. D.* and such widow, child, or children, or the guardian or guardians of such child or children if no widow, in such way and manner as the same is hereinbefore directed, at the expiration of the said term of ——— years, if both the said parties hereto should be then living, and then and in such case after payment of all debts due and owing to any person or persons whomsoever in respect of the said joint trade, and any sum or sums of money which either of them the said *C. D.* or the widow, child, or children, of the said *A. B.* may have in the said joint stock more than the other of them, together with the interest for the same, after the rate of £—— *per cent. per ann.* that the said joint stock of the said copartnership trade or business shall be divided between the said *C. D.* and such widow, child or children last mentioned, in equal parts, shares, and proportions, the said *C. D.* taking one moiety thereof, and such widow, child, or children, the other moiety thereof, and then also the profits of the said joint trade or business which shall have been made since the last general annual account, shall be divided into five equal parts or shares, four fifth parts whereof shall go and belong, and be had, taken, and received

by and among the said parties and their heirs and assigns

by the said *C. D.* and the remaining fifth part thereof shall go and belong, and be had, taken, and received by the widow, child, or children of the said *A. B.* as aforesaid. *And* it is also further covenanted and agreed by and between both the said parties to these presents, that if the said *C. D.* shall depart this life during the continuance of this copartnership, no benefit or advantage shall be had or taken by the said *A. B.* by means of such survivorship, so as to enjoy, have, or claim the whole partnership estate thereby, but in such case the said *A. B.* shall admit _____ of _____ a partner with him in the said joint trade or business, in the room, place, and stead of the said *C. D.* who shall be intitled to the share or interest of him the said *C. D.* in the said joint trade or business, and the stock increase profit thereof, and shall bear all losses in the said joint trade, in the same proportions as he the said *C. D.* would have done in case he had been living, upon the terms and conditions herein before mentioned, for all the then residue and remainder which shall be to come and unexpired of the said term of _____ years, in case the said _____ shall be willing to accept the same, but in case the said _____ shall refuse to accept the same, or shall happen to die before the expiration of this copartnership, leaving a widow, child, or children, or both, him surviving, no benefit or advantage shall be had or taken by the said *A. B.* by means of such survivorship, so as to enjoy, have, or claim the whole partnership estate thereby, but in such case the said *A. B.* shall carry on the said joint trade and business upon the terms and conditions hereinbefore mentioned, for all the residue and remainder which shall be then to come and

unexpired of the said term of ——— years, for the benefit of himself and such widow, child, or children of the said ——— as shall be living at the time of the decease of the said ——— in the proportions following (that is to say) the said *A. B.* shall have and be intitled to receive four full and equal undivided fifth parts or shares of the profit of the said trade or business, and such widow, child, and children last mentioned shall have and be intitled to the remaining one full and equal undivided fifth part or share of the said profits of the said trade or business, and shall and will bear and pay all losses attending the said trade or business, if any such shall happen thereby during the same term in the same proportions as are last herein before mentioned respecting the profits of the said trade or business; and from and after the end or expiration of the said term of ——— years hereby agreed on, then a final general account shall be taken, settled, and stated by and between the said *A. B.* and such widow, child, or children last mentioned, or their, his or her guardian, in such way and manner as the same is herein before directed at the expiration of the said term of ——— years, if both the said parties hereto should be then living; and then and in such case after payment of all debts due and owing to any person or persons whomsoever in respect of the said joint trade, and any sum or sums of money, which either of them, the said *A. B.* or the widow, child, or children of the said ——— may have in the said joint stock more than the other of them, together with interest for the same, after the rate of £—— *per cent. per annum*, that then the said joint stock of the said copartnership trade, or business, shall be divided be-

tween the said *A. B.* and such widow, child, or children last mentioned, in equal parts, shares, and proportions, and then also the profits of the said joint trade or business which shall have been made since the last general annual account shall be divided into five equal parts or shares, four fifth parts whereof shall go and belong to, and be had and received by the said *A. B.* and the remaining fifth part thereof shall go and belong, and be had, taken, and received by the widow, child, and children, or their guardian of the said *C. D.* And it is covenanted and agreed by and between the said parties, that in case either of them the said *A. B.* and *C. D.* shall happen to die during the copartnership, then the executors or administrators of such of them so dying shall and will within two months next after the expiration of the said term of _____ years, at the request, costs, and charges of the survivor of them, assign and transfer unto the survivor of them the said *A. B.* and *C. D.* his executors and administrators, the said messuage or tenement, warehouse and premises in _____ aforesaid, for all the then residue of the said term of years then to come therein by virtue of the lease thereof granted, but subject to the rent and covenants in the said indenture of lease thereof reserved and contained, and which, from the quarter day preceding the expiration of the said copartnership term of _____ years, on the tenant or lessee's part, ought to be paid, done, and performed, which rent and covenants the survivor of them the said *A. B.* and *C. D.* shall in such assignment, covenant from thenceforth to pay and perform accordingly, and therefrom to indemnify and save harmless the executors or administrators of such of them

so dying as aforesaid. *Provided always*, and it is further agreed by and between all the said parties, that if they shall be minded or desirous to dissolve the copartnership hereby agreed on, at any time during the continuance of the term of this copartnership, and one of them shall give three months notice in writing unto the other of them, of such his mind or desire, who shall accept, that then and upon such notice, the said parties do hereby covenant and agree, that from and after the expiration of such three months, this present partnership shall cease and absolutely determine, this indenture, or any thing herein contained to the contrary thereof in anywise notwithstanding, and then and in such case the partnership accounts shall be settled and adjusted by and between the said parties, to the day on which such notice shall expire, in the same manner as if the said copartnership had expired by effluxion of time, in which case the said *A. B.* shall and may have and take the said lease of the said messuage or tenement, manufactory and premises at ———— aforesaid, for the residue of the term of years thereof granted and then to come and unexpired, subject to the payment of the rent and performance of the covenants in the said indenture of lease thereof granted, and the tools belonging to the said manufactory, at a fair valuation, and appraisement to be set thereon respectively, otherwise that the same shall be sold for account of the said partnership. *And* it is also agreed by and between the said parties for themselves severally and respectively, and for their several and respective executors and administrators, that if at any time or times hereafter, any difference or controversy shall arise or happen

between the said parties, or between the survivor of them and the representative or representatives, or executors or administrators of any deceased partner touching the said joint trade or the proceeds thereof, or the settling of any account or accounts relating thereto, or any other matter or thing touching the said copartnership, or any thing herein contained, that all such differences shall be from time to time referred to the award, final end and determination of two indifferent persons, whereof each party shall nominate one; and that if the said two persons shall not agree within the space of one calendar month next after the matters in difference shall be referred to them, that then it shall be in the power of the said arbitrators to nominate a third person as umpire between the said parties, who shall have power to determine all matters in difference between them within the space of one calendar month next after the reference shall be so made to him as aforesaid. *And* that the said several parties, their executors or administrators, shall attend such arbitrators and umpire, and acquaint them of the matters in difference and of their several allegations thereon, at such time and place as the said arbitrators or umpire shall appoint. *And* that in every such case, each of the said parties, their and each of their executors or administrators shall and will from time to time, on their and each of their parts and behalfs, well and truly obey, abide by, and perform such award, order, and determination of and upon the premises so to be referred, as the said arbitrators or umpire shall make or set down in writing under their hands and seals for that purpose, so that the same be made and ready to be delivered to

the several parties in difference, or such of them as shall desire the same within the respective times thereinbefore limited for that purpose. *In witness, &c.*

Of COMMON RECOVERIES.

A Fine, we have seen in a former page, is a suit or action at law, either actual or fictitious, *compromised* by the parties. A recovery is a similar action, differing from a fine only in this, that it is not compromised like a fine, but carried on to the end of the suit; by which the lands intended to be conveyed or assured, are *recovered* from the grantor by the intended grantee; and this recovery, "being a supposed adjudication of the right, binds all persons, and vests a free and absolute fee simple in the recoveror." 2 *Bl. c. Com.* 357.

The intent of this species of assurance is to unfetter estates of inheritance from the chain of limitations by which they are frequently bound by the owner, to the unreasonable prejudice of the person in possession. And they have the effect of barring not only estates tail,

Of COMMON RECOVERIES.

but all remainders and reversions thereupon expectant on the determination of those estates: so that, by this species of assurance, a tenant in tail is enabled to convey his estate, discharged of all conditions and limitations in tail, and of all remainders and reversions.

Recoveries may have one or more vouchers, according to the object they are used to accomplish. It is however, in most cases, proper that the recovery should have two vouchers at the least, (generally called a *double voucher*;) by which the estate of freehold is conveyed first to an indifferent person, against whom the *præcipe* is brought and who vouches the tenant in tail; and the tenant in tail then vouches over the common vouchee: the use of the double voucher is that by recovering against a third person, and vouching the tenant in tail, every remote or latent right which he may have in the lands is barred, whereas if the recovery be had immediately against the tenant in tail himself, no other estate will be barred than that of which he may then be actually seized. See *Plow.* 8.

Much ingenuity has been displayed by writers on the subject of recoveries, with a view to explain the reasons and principles on which they proceed; but it has been observed by a late learned Judge, who long presided in the

Court where these fictitious actions are usually carried on, that "when men attempt to give reasons for common recoveries, they run into absurdities; and the whole of what they say is unintelligible jargon and nonsense." *Per Willes, Ch. J. 1 Wils. 73.* All that can be said of them, therefore, is, that they have been used for centuries as common assurances of the kingdom, and are now to be considered as mere forms of conveyance of the peculiar nature, and invented for the particular purpose we have described.

See further relative to common recoveries, *Stat. 11 Hen. 6. c. 20. 14 Eliz. c. 8 & 14. Geo. 2. c. 20. 2 Black. Com. 357. 361. Lil. Conv. 243. Shep. Touch. 37. 2 Cru. Pass. 5 Term Rep. 104.*

For precedents of recoveries, they being like those of fines, too voluminous for a collection of this nature, we therefore refer the reader to *Shep. Prac. Counsellor, Title Recovery.*

Of DEEDS of LEASE and RE-LEASE, and RELEASE.

A Release, as applied to lands, is a mode of conveying a person's *right* and interest in lands, &c. to one who has some former estate therein in *possession*. And agreeably to this definition, it may enure to the various purposes of transmitting, enlarging, or extinguishing an estate. See *Lit.* § 445. 459. 465. But that for which it is most generally used is the first; namely, to *enlarge* an estate; in which case it is material that the relesee be in *possession* of the lands, &c. intended to be released; otherwise no enlargement can take place. And on this operation of a release is founded a part of the efficacy of the common mode of conveyance by *lease and release*, which is thus effected: A lease for a year, (or any other period) is made to the intended relesee; this being made for a pecuniary consideration, vests the *use* of the estate for the term in the lessee; and the statute of uses immediately annexing the *possession*, he is enabled to

take a release (by way of enlargement) of the reversion.

The nature of this species of conveyance has been so perspicuously explained by Mr. *Fonblanque*, (2 *Treat. Eq.* 13. n. g.) that I cannot refrain from indulging the reader with the substance of his remarks upon it; particularly as from its having of late (owing to the inconvenience attending alienation by *feoffment*) become the most common mode of assurance, it will reasonably be expected, that we should be somewhat particular in our observations upon it. As it is originally derived from the common law, it will be necessary to distinguish in what respects it operates as a common law conveyance, and in what it operates under the statute of uses. At common law, when the usual mode of conveyance was by feoffment with livery of seizin, if there was a tenant in possession, so that livery could not be made, the reversion was granted and the tenant attorned to the reversioner, because by this mode the reversion or remainder of an estate might be conveyed without livery. When it depended on an estate previously existing it was natural to proceed one step further, and to create a particular estate, for the express and sole purpose of conveying the reversion; and then by a sur-

render of the release, either of the particular estate to the reversioner, or of the reversion to the particular tenant, the whole fee vested in the surrenderee or releffee. It was afterwards observed, that there was no necessity to grant the reversion to a *stranger*; and that if a particular estate was made to the person to whom the fee was proposed to be conveyed, the reversion might be immediately released to him; which release, operating by way of enlargement, would give the releffee the *fee*. In all these cases the particular estate was only an estate for years; for, at the common law, the ceremony of seizin is as necessary to create an estate of freehold as an estate of inheritance: still an actual entry would be necessary, on the part of the particular tenant; for, without actual possession, the lessee is not capable of a release operating by way of enlargement. But this necessity of entry, for the purpose of obtaining the possession, was superseded or rendered unnecessary by the statute of uses. For by that statute, the possession was immediately transferred to the cestui que use; that a bargainee under that statute is as much in possession, and as much capable of a release, before or without entry, as a lessee is at common law after entry. All, therefore, that remained to be done, to avoid, on the one

hand, the necessity of livery and seizin from the grantor, and on the other, the necessity of an actual entry on the part of the grantee was, that the particular estate (which for the reasons before mentioned must be an estate for years) should be so framed as to be a *bargain and sale* within the statute. Originally it was made in such a manner as to be both a *lease* at the common law, and a *bargain and sale* within the statute. But as it is held, that where conveyances may operate both by the common law and statute, they shall be considered to operate by the common law, it became the practice to insert among the operative words, the words "bargain and sell;" and, in fact, it should seem to be more accurate to use those words only, and to express (as is usual) that the bargain and sale, or lease, is made, to the intent that the lessee may thereby and by the effect of the statute of uses, be capable of taking a release of the premises intended to be conveyed. *Supra*.

A release, when applied to goods and chattels, is generally used to signify an extinguishment of a *right*, and a consequent discharge to the person from whom it was due; as a release of a legacy and the like.

Of this assurance see *Lil. Conv.* 139, 236.

3 *Pow. Wood.* 538. *Co. Lit.* 207^a n. (3).
Shep. Touch. 320. 2. *Fonb. Eq.* 13. n. (g.)

** Lease for a Year to precede a Release.*

Confidera-
tion.

Bargain and
sale.

To ho'd for
a year.

Redden-
dum a pep-
per corn.

To enable
bargaineeto
take a re-
lease.

T*THIS Indenture, made, &c. between A. L. of, &c. of the one part, and D. E. of, &c. of the other part, Witnesseth, that for and in consideration of the sum of 5s. of lawful money of Great Britain, to the said A. L. in hand paid by the said D. E. upon or immediately before the sealing and delivery of these presents, the receipt of which is hereby acknowledged; he the said A. L. Hath bargained and sold, and by these presents Doth bargain and sell unto the said D. E. his executors, administrators and assigns, All, &c. To have and to hold, &c. unto the said D. E. his executors, administrators and assigns, from henceforth, for and during and unto the full end and term of one whole year, from henceforth next ensuing, and fully to be compleat and ended; yielding and paying, therefore, yearly and every year, the rent or farm of a pepper corn, on the last day of the said term, if demanded, to the intent and purpose, that by virtue of these presents, and by force of the statute made for transferring of uses into possession, he the said D. E. may be in the full and actual possession of all and singular the said premises hereby bargained and sold, or intended so to be, with their appurtenances, and thereby be*

enabled to accept and take a grant and release of the reversion and inheritance thereof, to him, his heirs and assigns, for ever.

(If trustees to uses be releasees, say)

And thereby be enabled to receive and take a grant and release of the reversion and inheritance thereof, to them and their heirs, to and for the several uses, upon the trusts, and for the several ends, intents and purposes, as in and by such grant or release shall be limited, expressed or declared, of and concerning the same premises hereinbefore bargained and sold.

(If the release be for the life of the releasor only, say)

And be thereby enabled to accept and take a grant and release of the reversion of the freehold thereof, to him, his heirs and assigns, during the life of the said *A. L.* by indenture intended to bear date the day next after the day of the date of these presents, and to be made between the same parties as are parties hereto.

(If the release be by way of mortgage, say)

And thereby be enabled to accept and take a grant and release of the reversion and inheritance thereof, to him and his heirs, agreeably to the purport, true intent and meaning, of a certain indenture of release, by way of mortgage, intended to bear date the day next after the day of the date of these presents, and to be made between the said *A. L.* of the one part, and the said *D. E.* of the other part. *In witness, &c.*

* *Release to a purchaser in fee.*Recital of
contract.Considera-
tion.Grant and
release.To hold to
the use of
purchaser
in fee.

THIS Indenture, made, &c. between D. E. of, &c. of the one part, and F. G. of, &c. of the other part. *Whereas* the said D. E. hath lately entered into a contract with the said F. G. for the purchase of the messuages, farms and hereditaments hereinafter mentioned to be hereby granted and released, with other hereditaments, at or for the price or sum of £———. *Now this Indenture witnesseth*, that in order to complete the said contract, and for and in consideration of the sum of £——— of, &c. to the said D. E. in hand well and truly paid, by the said F. G. at or before the sealing and delivery of these presents, the receipt of which said sum of £——— being in full for the absolute purchase of the said messuages, farms, lands and hereditaments, hereinafter granted and released, and of the fee simple and inheritance thereof, free from incumbrances, he the said D. E. doth hereby acknowledge, and thereof and of and from the same, and every part thereof, doth acquit, release, and for ever discharge the said D. E. his heirs, executors, and administrators, and every of them, by these presents, he the said D. E. *Hath* granted, bargained, sold, aliened, released and confirmed, and by these presents *Doth* grant, &c. unto the said F. G. (in his actual possession &c.) and to his heirs, *All, &c. &c. (parcels with general words)* *To have and to hold* the said messuages, &c. and all and singular other the premises hereby granted and released, or expressed

and intended so to be, with their and every of their rights, members and appurtenances, unto the said *F. G.* his heirs and assigns, * *To the use of* the said *F. G.* his heirs and assigns, for ever. And the said *D. E.* for himself, his heirs, executors and administrators, doth covenants, promise and agree, to and with the said *F. G.* his heirs and assigns, by these presents, in manner following; (*i. e.*) that for and notwithstanding any act, deed, matter or thing whatsoever, by him the said *F. G.* or any of his ancestors, had, made, done, committed, executed, or wittingly or willingly suffered to the contrary, he the said *D. E.* at the time of the sealing and delivery of these presents, is lawfully, rightfully, and absolutely seized, of and in, or well and sufficiently entitled unto, the said messuages, and premises hereby granted and released, or intended so to be, with the appurtenances to the same belonging, of or for a good, sure, perfect, lawful, absolute and indefeasible estate of inheritance in fee simple, in possession, without any manner of condition, use, trust, power of revocation, limitation of use or uses, or any other restraint, cause, matter or thing, whatsoever, to alter, change, charge, abridge, defeat, incumber, revoke or make void the same. And that (for and notwithstanding any such act, deed, matter or thing, as aforesaid) he the said *D. E.* now hath in himself good right, full power, and lawful and absolute authority, to grant,

(* *When to tenants in common.*)

To hold, &c. unto the said *A. B.* and *C. D.* their heirs and assigns, *To the use and behoof* of the said *A. B.* and *C. D.* as tenants in common and not as joint-tenants, and of the several and respective heirs and assigns of them the said *A. B.* and *C. D.* for ever.

release and convey, all and singular the said hereditaments and premises, with the appurtenances, *To the use* of the said *F. G.* his heirs and assigns, in manner aforesaid, according to the true intent and meaning of these presents. *And also* that the said messuages and premises hereby granted and released, or intended so to be, and every of them, and every part thereof, with the appurtenances to the same belonging, shall and lawfully may, from time to time and at all times hereafter, remain, continue and be, to the use of the said *F. G.* his heirs and assigns, and shall and may accordingly be peaceably and quietly held and enjoyed by the said *F. G.* his heirs and assigns, without any lawful let, suit, trouble, molestation or interruption, whatsoever, of, from or by the said *D. E.* or his heirs, or any other person or persons whomsoever, lawfully or equitably claiming or to claim, by, from or under, or in trust for him or them, or any of his ancestors. *And* that free and clear, and freely, clearly and absolutely acquitted, exonerated, released and discharged, or otherwise, by him the said *D. E.* his heirs, executors or administrators, well and sufficiently saved, defended, kept harmless and indemnified, of, from and against, all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, jointures or dowers, uses, trusts, wills, entails, recognizances, judgments, extents, executions, rents, arrears of rent, annuities, legacies, forfeitures, re-entries, cause and causes of forfeiture and re-entry, debts, titles, troubles, charges and incumbrances, whatsoever, had, made, done, committed, executed or suffered, by him the said *D. E.* or any of his ancestors, or any other person or persons whomsoever, lawfully or

equitably claiming or to claim, by, from or under, or in trust for him, them, or any of them, or by or through his, their, or any of their wilful means or default, consent, privity or procurment. *And further* that he the said *D. E.* and his heirs, and all and every other person and persons whomsoever, having or lawfully claiming, or who shall or may have or lawfully claim any estate, right, title, trust or interest, whatsoever, at law or in equity, of, in, to or out of the said messuages, and premises hereby granted and released, or intended so to be, or any of them, or any part thereof, by, from or under, or in trust for him or them, or any of his ancestors, shall and will, from time to time, and at all times hereafter, upon the request, and at the costs and charges of the said *F. G.* his heirs or assigns, make, do, perform, acknowledge, levy, suffer and execute, or cause and procure to be made, &c. all and every such further and other lawful and reasonable act and acts, thing and things, devises, conveyances and assurances, in the law, whatsoever, for the further, more perfect and absolute settling, conveying and assuring, of all and singular the said messuages and premises with their appurtenances, *To the use of* the said *F. G.* his heirs and assigns, as by the said *F. G.* his heirs or assigns, or his, their, or any of their counsel in the law, shall be reasonably devised, advised or required. *In witness, &c.*

* *To enable a purchaser to convey in bar of his wife's dower.*

TO have and to hold the said lands, hereditaments and premises, hereby granted and released, or expressed or intended so to be, with their and every of their appurtenances, unto the said *D. E.* (*purchaser*) his heirs and assigns, to such uses, upon and for such trusts, intents and purposes, and with, under and subject to, such powers, provisos, declarations and agreements, as the said *D. E.* by any deed or deeds, or instrument or instruments in writing, to be by him sealed and delivered, in the presence of and attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to be by him signed and sealed, in the presence of and attested by three or more credible witnesses, shall from time to time direct or appoint. And in default of and until such direction or appointment, and so far as any such direction or appointment shall not extend, to the use of the said *D. E.* and his assigns, during the term of his natural life; and after the determination of that estate, by forfeiture or otherwise, in his life time, and in the mean time subject thereto, to the use of the said *F. G.* (*trustee*) his heirs and assigns, during the life of the said *D. E.* *in trust* for the said *D. E.* and to prevent any wife of the said *D. E.* from being intitled to her dower in or out of the premises, or any part thereof; and after the decease of the said *D. E.* to the use of the heirs and assigns of

the said D. E. for ever, and to and for no other use, intent or purpose, whatsoever.

 The usual modes of barring dower seem open to objection. Sometimes the estate is limited to a purchaser and a trustee and their heirs, but as to the estate of the trustee and his heirs, in trust for the purchaser and his heirs, this exposes the purchaser to the chance of the trustee's dying in his life; in which case the right of dower will attach upon the estate. Sometimes the estate is limited to a purchaser and a trustee and the heirs of the trustee, but in trust for the purchaser. Sometimes it is limited immediately to the trustee and his heirs, in trust for the purchaser and his heirs: but each of these modes is objectionable, as they keep the legal fee from the purchaser, and expose him to all the inconveniences of its escheating to the crown for want of an heir, or of its becoming vested in infants, married women, or of persons residing at a distance, not easily discoverable, or not willing to join in the conveyances required to be made of it. Sometimes it may even be considered to pass in the general devise of the trustee's will, and by that means become settled at law to uses in strict settlement, and therefore not to be regained without the aid of Parliament. It cannot therefore be desirable that the legal fee should be outstanding in a trustee. To prevent which Mr. Butler has adopted the mode in question. By that the wife's right of dower will unquestionably be precluded; the purchaser will have the absolute disposal of the legal fee during his life, and on his death it will vest in his heir by descent. And this it should seem will avoid the doubt which many respectable gentlemen of the profession have raised, and in my humble opinion with no small colour of reasoning, whether if an estate is limited to the

LEASE AND RELEASE.

appointment of a person, and for want of appointment to him in fee, his appointment would be good against his wife's right of dower in case she survives him.

* *Release during the life of releasor.*

Recites devise of the life estate.

Release.

Habendum.

THIS Indenture, made, &c. between L. M. of, &c. of the one part, and N. O. of, &c. of the other part. *Whereas* P. R. late of, &c. deceased, by his last will and testament in writing, duly executed and attested, in the manner prescribed by law, for passing real estate by devise, and bearing date, &c. did give and devise unto the said L. M. the messuage or tenement, and hereditaments, hereinafter particularly mentioned and described, for and during the term of his natural life, as in and by the said will remaining in the prerogative Court of the Archbishop of Canterbury, relation being thereunto had, will appear. *Now this indenture witnesseth*, that in consideration of the sum or £—— of, &c. to the said L. M. in hand paid by the said N. O. upon or immediately before the sealing and delivering these presents, (the receipt, &c.) he the said L. M. hath granted, bargained, sold, aliened, released and confirmed, and by these presents doth grant, &c. unto the said N. O. (in his actual possession, &c.) and to his heirs and assigns, *All, &c. (premises with general words).* To have and to hold, &c. unto the said N. O. his heirs and assigns, for and during the natural life of the said L. M. *To the only proper use and behoof* of the said N. O. his heirs and assigns, during the natural life of the

said *L. M.* and to and for no other use, &c.
(Covenant from L. M. that he is seized of the premises for life, hath power to grant, for quiet enjoyment, and for further assurance). In witness, &c.

* *Conveyance of the equity of redemption of premises to the mortgagee thereof in fee.*

THIS Indenture, made, &c. between *A. B.* of, &c. of the one part, and *D. E.* of, &c. of the other part. *(Recite the mortgage from A. B. to D. E.)* And whereas the said principal sum of £—— or any part thereof, was not paid to the said *D. E.* agreeably to the proviso of the aforesaid recited indenture of release, but still remains due and owing thereon, whereby the estate and interest of the said *D. E.* of and in the said mortgaged premises, became absolute in law. And whereas there is now due and owing to the said *D. E.* upon or in virtue of his said recited security for principal and interest, the sum of £——. And whereas the said *D. E.* hath contracted and agreed with the said *A. B.* for the absolute purchase of the freehold and inheritance of the said lands, hereditaments and premises, hereinbefore particularly mentioned and described, and comprized in the hereinbefore in part recited indenture of mortgage, and of all the right and equity of redemption of him the said *A. B.* of and in the same, at or for the price or sum of £—— out of which said sum is to be deducted or allowed the said sum of £—— so due and owing to the said *D. E.*

That money is still due, &c.

Contract for purchase.

Consideration.

Grant and release.

for principal and interest, as aforesaid. *Now this indenture witnesseth*, that in pursuance of the said recited agreement, and as well for and in consideration of the said sum of £—— so due and owing as aforesaid, for principal money and interest on the said recited mortgage or security, and in full discharge and satisfaction of the same, as of the further sum of £—— of lawful money of Great Britain, to the said *A. B.* in hand well and truly paid by the said *D. E.* at or before the sealing and delivery of these presents, the receipt, &c. And for extinguishing all right and equity of redemption of, in and to the said mortgaged premises, he the said *A. B.* hath granted, bargained, sold, aliened, released and confirmed, and by these present, *doth* fully and absolutely grant, &c. unto the said *D. E.* (in his actual possession, &c.) and to his heirs, *All* those the aforesaid, &c. and all and singular other the hereditaments and premises, with their and every of their appurtenances mentioned and comprised in the hereinbefore in part recited indenture of mortgage, and thereby granted and demised unto the said *D. E.* his executors, administrators and assigns, as aforesaid. And the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits thereof, and of every part and parcel thereof; and all the estate, right, title, interest, inheritance, use, trust, property, equity of redemption, claim and demand, whatsoever, both at law and in equity, of him the said *A. B.* of, in and to the same premises, every or any part or parcel thereof, and all deeds, evidences and writings, whatsoever, in the custody or power of the said *A. B.* which concern or relate to the said premises hereby granted and released, or any part or

parcel thereof solely and alone; and true and attested copies of all such other deeds, evidences and writings in the custody or power of the said *A. B.* which concern or relate to the same premises, or any part or parcel thereof, jointly with any other lands, tenements, or hereditaments, such copies to be transcribed and taken at the cost and charges of the said *C. D.* *To have and to hold* the said lands, hereditaments, and all and singular other the premises hereby granted and released, or mentioned and intended so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said *C. D.* his heirs and assigns, *To the only proper use and behoof* of the said *C. D.* his heirs and assigns for ever, freed and absolutely discharged of and from all right and equity of redemption whatsoever. (*Covenants from mortgagor that he hath good right to convey, for quiet enjoyment and for further assurance*). In witness, &c.

To hold to mortgagee in fee.

Conveyance of a freehold estate to trustees as a security for fidelity in an employment of trust.

THIS Indenture made, &c. between *A. B.* of, &c. of the first part, *C. D.* of, &c. of the second part, and *E. F.* of, &c. and *G. H.* of, &c. (trustees for the purposes hereinafter expressed) of the third part. *Whereas* the said *A. B.* is seised in fee simple of an absolute estate of inheritance to him and his heirs, of and in the messuages or tenements, lands, hereditaments and premises hereinafter men-

Recites that *A. B.* is seised of estates in fee.

And has
been ap-
pointed
clerk to
C. D. and
entrusted
with con-
siderable
sums of
money,

with a view
therefore to
indemnify
C. D.

Clerk
grants and
releases.

Parcels.

tioned and described and expressed or intended to be hereby granted and released, and hath lately been appointed by the said C. D. to be a clerk in the bank of England, and in consequence thereof will be entrusted with considerable sums of money, and other property belonging to the said C. D. or for which the said C. D. is responsible; and being desirous to give security for the faithful discharge of the trust so reposed in him by the said C. D. hath agreed to make such grant and release as hereinafter is mentioned as a security to the said C. D. for his fidelity in discharging the said trust. *Now this indenture witnesseth*, that in pursuance of the said agreement, and in order to save harmless and keep indemnified the said C. D. his heirs, executors and administrators from any loss or damage which may happen to the said C. D. by any breach of trust or wilful default of him the said A. B. and also for and in consideration of the sum of five shillings of lawful money of Great Britain to him the said A. B. in hand paid by the said E. F. and G. H. at or before the sealing and delivery of these presents, the receipt whereof is acknowledged, and for divers other good causes and considerations, the said A. B. hereunto moving, he the said A. B. (at the request and by the direction of the said C. D. testified by his being made part to, and sealing and delivery of these presents) *hath* granted, bargained, sold, aliened, released and confirmed, and by these presents, *doth* (at such request, and by such direction as aforesaid) grant, &c. unto the said E. F. and G. H. (in their actual possession, &c.) all, &c. and all ways, waters, watercourses, easements, profits, privileges, liberties, commodities, advantages, emoluments,

hereditaments and appurtenances whatsoever, to the said messuages or tenements, hereditaments and premises, belonging or in anywise appertaining, or therewith, or with any parcel thereof usually held, used, occupied or enjoyed, or accepted, reputed, deemed, taken or known as part, parcel or member thereof, or any part thereof; and the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits thereof, and of every part and parcel thereof; and all the estate, right, title, interest, inheritance, use, trust, property, claim and demand whatsoever, both at law and in equity, of him the said *A. B.* of, in, to, or out of the same premises, every or any part or parcel thereof; and all deeds, evidences and writings whatsoever, in the custody or power of the said *A. B.* which concern or relate to the said premises hereby granted or released, or any part or parcel thereof, solely and alone; and true and attested copies of all such other deeds, evidences and writings in the custody or power of the said *A. B.* which concern or relate to the same premises, or any part or parcel thereof, jointly with any other lands, tenements or hereditaments, such copies to be transcribed and taken at the costs and charges of the said *A. B.* *To have and to hold* the said messuages or tenements, hereditaments, and all and singular other the premises hereby granted and released, or mentioned and intended so to be, and every part and parcel thereof, with their and every of their appurtenances unto the said *E. F.* and *G. H.* their heirs and assigns, *to* the only proper use and behoof of them the said *E. F.* and *G. H.* their heirs and assigns for ever, *upon such trusts* nevertheless, and to and for such uses, intents

To hold to
the use of
E. F. and
G. H.

Upon usual
trusts by
way indem-
nity.

and purposes as are hereafter expressed and declared of and concerning the same, that is to say, *upon trust*, that they the said *E. F.* and *G. H.* or the survivor of them, or the heirs and assigns of such survivor, do, and shall at any time or times hereafter (in case any deficiency shall appear in the accounts of the said *A. B.* or any default in his conduct) at the request and by the direction of the said *C. D.* testified in writing under his hand and seal, in the presence of, and attested by two or more credible witnesses, by absolute sale of the fee simple and inheritance, either by public auction or private contract, or by mortgage or demise for any term or terms of years, of all or any part or parcel of the said messuage or tenements, hereditaments and premises hereby granted and released, or mentioned and intended so to be, raise and levy such sum and sums of money as to them the said *E. F.* and *G. H.* or the survivor of them, or the heirs or assigns of such survivor shall seem meet; and do and shall pay, apply and dispose of all and every such sum and sums of money as shall come to his or their hands, by any such sale, mortgage or demise as aforesaid, to, for and upon the purposes and trusts hereinafter mentioned, that is to say, in the first place, that they the said *E. F.* and *G. H.* or the survivor of them, or the heirs and assigns of such survivor do and shall (after deducting thereout all such reasonable and necessary costs, charges, and expences as they the said trustees or either of them, or the survivor, or the heirs and assigns of such survivor, shall or may sustain, expend, disburse, or be put unto, in or about the execution of the trusts hereby in them reposed) pay, satisfy and discharge unto the said *C. D.* his execu-

tors, administrators and assigns, all such sum and sums of money as he the said *A. B.* shall from time to time have received or been entrusted with, by, or for the use of, or on account of the said *C. D.* or his principal, and for which the said *A. B.* shall not have duly and faithfully accounted or actually and *bona fide* paid or applied to, or for the use of the said *C. D.* or his principal, and the remaining part of such sum or sums of money as shall remain unexpended after the payments aforesaid, unto the said *A. B.* his executors, administrators or assigns. *And upon further trust,* that they the said *E. F.* and *G. H.* or the survivor of them, or the heirs and assigns of such survivor, do and shall permit and suffer the said *A. B.* to receive and take the rents, issues and profits of the said premises to and for his and their own use and benefit, until any such sale, mortgage or demise shall be made thereof as aforesaid, and subject to the trusts aforesaid. *Upon further trust,* that they the said *E. F.* and *G. H.* or the survivor of them, or the heirs and assigns of such survivor, do and shall at any time hereafter, in case the said *A. B.* should be discharged from, or should quit the said appointment (in case no deficiency of any kind then appears in the accounts of the said *A. B.* with the said *C. D.*) or from and after the decease of the said *A. B.* (in case no deficiency of any kind appears in the accounts of the said *A. B.* with the said *C. D.*) reconvey and reasssure all and singular the aforesaid messuage or tenements, hereditaments and premises, with their and every of their appurtenances, or such part or parts thereof as shall then remain unfold, unto and to the use of such person and persons, and to and for such estate and estates, uses, trusts,

Usual co-
venants.

intents and purposes, and under and subject to such provisoes, limitations and agreements as he the said *A. B.* shall by any deed or deeds, writing or writings, or by his last will or testament to be by him duly executed, direct, order, limit or appoint, and in default of, and until such direction, order, limitation or appointment, unto the said *A. B.* his heirs and assigns for ever. And he the said *A. B.* for himself, his heirs, executors and administrators, and for every of them, doth covenant, promise, grant and agree to and with the said *E. F.* and *G. H.* their heirs and assigns by these presents, in manner following, that is to say, that he the said *A. B.* and his heirs, from and after the time or times of contracting for, or compleating such sale or sales as aforesaid (in case the fee simple and inheritance of the said premises, or any of them, or any part thereof, shall be sold by virtue of these presents instead of being mortgaged) shall and will stand, remain, and be for ever excluded, barred and estopped of and from all right, title, claim and redemption whatsoever, of and in the said messuage or tenements, hereditaments and premises hereby released and conveyed, or intended so to be, and of and in every part and parcel thereof, which shall be so sold and conveyed in pursuance of these presents; and that the purchaser and purchasers of the said premises respectively, and his, her and their heirs and assigns respectively, shall afterwards hold and enjoy the said premises, freed and discharged of and from all right, title, claim, demand and redemption whatsoever, of the said *A. B.* or his heirs, or of any other person or persons claiming or to claim by, from, or under him, them, or any of them, as fully and

effectually to all intents and purposes, as if the same premises had been sold, released and conveyed by the said *A. B.* his heirs or assigns, or by virtue of any decree in equity, or by any other ways or means whatsoever. *And also* that the receipt or receipts of the said *E. F.* and *G. H.* or of the survivor of them, or the heirs and assigns of such survivor, shall from time to time, and at all times hereafter, be good, full, absolute and effectual acquittances, releases and discharges, to all and each and every purchaser or purchasers, mortgagee or mortgagees, of all or any part or parcel of the above-mentioned messuage or tenements, hereditaments and premises, and to his, her and their heirs, executors, administrators and assigns, for so much of such money as in such receipt or receipts shall be expressed to be received; and that after such receipt or receipts, the person or persons who shall pay, advance, or lend any such sum or sums of money as aforesaid, shall be, and is and are hereby absolutely acquitted, released and discharged of and from the same, and shall not be obliged or required to see to the application thereof, or be in any wise answerable or accountable for the loss, misapplication or nonapplication thereof, or any part thereof, or be liable to see the same applied to, for and upon the trusts and purposes aforesaid, or any of them. *And further*, that they the said *E. F.* and *G. H.* or the survivor of them, or the heirs and assigns of such survivor, shall be charged and chargeable only for such monies as they and each of them shall respectively actually receive by virtue of the trusts hereby in them respectively reposed; nor shall the one of them be answerable or accountable for the other or others of them,

or for the acts, receipts, neglect or defaults of the other or others of them; nor shall they or either of them be answerable or accountable for the failure or deficiency of any banker or other person with whom the said trust monies, or any part thereof, shall or may be placed for the safe custody or otherwise, in the execution of any of the aforesaid trusts, nor for the failure, insufficiency, or defect of any security or securities on which the same shall or may be placed out at interest; nor for any misfortune, loss or damage which may happen in remitting, paying and applying all or any part of the said monies, or in anywise relating to the execution of the aforesaid trusts, except the same shall happen through his or their own wilful default. *And likewise* that it shall and may be lawful to and for the said trustees, and for each of them, or for the survivor of them, or the heirs and assigns of such survivor, from time to time and at all times hereafter, to retain and deduct out of all or any of the monies which shall, by virtue of these presents, or any trust herein declared, come to his or their hands, all such reasonable costs, charges and expences, as they or either of them shall or may respectively sustain, expend, disburse, or be put unto, in, or about the executing or performing any of the trusts hereby in them reposed. (*Covenant from A. B. with E. F. and G. H. that he is seized in fee, hath good right to convey, for quiet enjoyment free from incumbrances, and for further assurance*). In witness, &c.

* *Recoveyance of an estate mortgaged in fee.*

THIS Indenture, made, &c. between A. B. of, &c. of the one part, and C. D. of, &c. of the other part. (*Recites a mortgage in fee from A. B. to C. D.*) And whereas the said principal sum of £—— or any part thereof, was not paid to the said A. B. on the day mentioned in the proviso of the said recited indenture of release for payment thereof, whereby the estate and interest of the said A. B. of and in the said mortgaged premises, became absolute in law. And where- as there is now due and owing to the said A. B. on the day of the date of these presents, for principal and interest on the said recited security, the sum of £—— and no more. Now this indenture witnesseth, that for and in consideration of the sum of £—— of lawful money of Great Britain, to the said A. B. in hand well and truly paid by the said C. D. upon or before the sealing and delivery of these presents, being in full of all principal money and interest due on the above-recited mortgage and security, the receipt and payment of which said sum of £—— the said C. D. doth acknowledge, and thereof and therefrom and from every part thereof doth acquit, release, exonerate, and for ever discharge the said C. D. his heirs, executors and administrators, and every of them, by these presents, he the said A. B. hath bargained, sold, released and confirmed, and by these presents doth bargain, sell, release and confirm unto the said C. D. (in his actual possession, &c.) and to his heirs, all that and those the aforesaid, &c. Parcels.

LEASE AND RELEASE.

General
words.

To hold

to the use
of mort-
gagor.

Discharged
of the mort-
gage.

and all and singular other the hereditaments and premises, with their and every of their appurtenances, comprised in the said in part recited indentures of lease and release, and thereby granted and conveyed unto the said *A. B.* his heirs and assigns, for securing the payment of the said principal sum of £—— and interest for the same as aforesaid; and the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits of all and singular the said premises; and all the estate, right, title, interest, trust, property, claim and demand whatsoever, both at law and in equity of him the said *A. B.* of, in, to or out of the same premises, every or any part or parcel thereof, *To have and to hold* the said lands, hereditaments, and all and singular other the premises hereby released and conveyed, or expressed and intended so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said *C. D.* his heirs and assigns, *To the only proper use and behoof* of the said *C. D.* his heirs and assigns, for ever freed and absolutely discharged and exonerated of and from the above in part recited indenture of release or mortgage, and the said principal sum of £—— therein mentioned to be thereby secured, and all interest thereof. (*Covenant from mortgagee that he hath done no act to incumber.*) In witness, &c.

* *Conveyance from trustees containing a covenant to produce writings.*

Parties.

THIS Indenture of three parts, made, &c. between *J. M.* and *W. J.* both of, &c. of the first part, *J. R.* of, &c. of the

second part, and *J. A.* of, &c. of the third part. *Whereas* by indenture of lease and release bearing date respectively the _____ and _____ days of _____ the release being of ten parts, and made or expressed to be made between *J. S.* of, &c. of the first part, *A. R.* of, &c. of the second part, *T. C.* of, &c. of the third part, *R. L.* of, &c. of the fourth part, *M. P.* of, &c. *W. P.* of, &c. and *J. B.* of, &c. of the fifth part, *F. R.* of, &c. of the sixth part, *J. T.* of, &c. and *P. D.* of, &c. of the seventh part, *J. B.* and *G. B.* of, &c. of the eighth part, the aforesaid *J. R.* of the ninth part, and the aforesaid *J. M.* and *W. J.* of the tenth part. *And* by a fine in the said indenture of release covenanted to be, and which hath been accordingly levied, wherein the said *J. M.* and *W. J.* were plaintiffs, and the said *J. R.* and *J.* his wife were defendants, divers messuages, farms, lands, tenements and hereditaments in the said indentures of lease and release particularly described, being the estates of the said *J. R.* (and whereof the messuage or tenement, mills, lock, piscary and hereditaments herein after expressed to be hereby granted and released, are part and parcel) were granted, released, conveyed and assured unto and to the use of the said *J. M.* and *W. J.* their heirs and assigns for ever, *upon trust*, that they the said *J. M.* and *W. J.* or the survivor of them, or his heirs, should with all convenient speed sell and dispose of the said messuage, &c. thereby conveyed to them as aforesaid, either together or in parcels, to any person or persons who should be willing to become the purchaser or purchasers of the said premises or any part thereof, for the most money and best price or prices that could be reasonably

Recital of
the deed
under
which the
trustees
convey.

Contract
for the sale
recited.

had or gotten for the same, either by public sale or private contract; and did and should pay, apply and dispose of the money which should arise by such sale or sales in the manner in the said indenture of release mentioned; and it is by the same indenture of release declared and agreed, that the receipt and receipts of the said J. M. and W. J. or the survivor of them, his heirs or assigns, under their or his hands or hand respectively, for the purchase money for which any of the said messuages, &c. thereby vested in them respectively should be sold or conveyed as aforesaid, should from time to time be a good and sufficient discharge to such purchaser and purchasers, his, her and their respective heirs, executors, administrators and assigns, for so much of the said purchase money, for which such receipt or receipts should be given, and such purchaser or purchasers, and his, her or their heirs, executors, administrators and assigns, from and after payment of his, her or their respective purchase money should be, and was and were thereby absolutely acquitted and discharged of and from the same, and should not be obliged to see to the application, or be in anywise answerable or accountable for any his misapplication or non-application thereof. *And whereas* the said J. M. and W. J. in pursuance of the trusts reposed in them by the said recited indenture of release, have with the privity and approbation of the said J. R. contracted and agreed with the said J. A. for the sale to him of the freehold and inheritance in fee simple of the messuage or tenement, mills, lock, piscary and hereditaments herein after mentioned and described (being part and parcel of the said hereditaments and premises com-

LEASE AND RELEASE.

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prized in the said recited indentures of lease and release, and fine, and thereby conveyed to the said *J. M.* and *W. J.* and their heirs, upon the trusts aforesaid) at or for the price or sum of £—— and the said *J. R.* hath agreed to join in granting, releasing, confirming and assuring the said hereditaments so contracted to be sold, unto and to the use of the said *J. A.* his heirs and assigns, in the manner hereinafter expressed. *Now this indenture witnesseth*, that in pursuance and performance of the trusts reposed in the said *J. M.* and *W. J.* by the said recited indenture of release, so far as relates to the said hereditaments so contracted to be sold, and for and in consideration of the sum of £—— of, &c. by the said *J. A.* to the said *J. M.* and *W. J.* in hand at or before, &c. well and truly paid, the receipt, &c. and also for and in consideration of the sum of £—— of like lawful money by the said *J. A.* to the said *J. R.* in hand at the same time well and truly paid, the receipt whereof is hereby acknowledged; they the said *J. M.* and *J. W.* (with the privity and approbation of the said *J. R.* testified by his being a party to and executing these presents), *Have* and each of them *Hath* bargained, sold, and released, and *Do* and each of them *Doth* bargain, &c. and the said *J. R.* *hath* granted, bargained, sold, released, ratified and confirmed, and by these presents *doth* fully and absolutely grant, &c. unto the said *J. A.* (in his actual possession, &c.) and to his heirs, *all* that messuage, tenement, or dwelling house, orchard, backside, and appurtenances thereto belonging; and also all that lock called ———

And that the party who had conveyed upon trust had agreed to join in the conveyance.

Consideration.

Trustees release, and the owner grants and confirms.

Parcels.

LEASE AND RELEASE.

lock, with the mills there, and the wears, bucks, pools, lock pool, and mill pool, the winch and the piece of ground the winch stands on belonging to the lock; and all the piscary or fishing of the free water called the upper water, and all waste ground whatsoever to the said water belonging, all which premises are situate, lying, and being in the parish of

_____ in the said county of _____

and were formerly in the tenure of _____ at

and under the yearly rent of £_____ or

thereabouts, and were formerly purchased by

S. R. father of the said J. R. of T. M. of,

&c. together with all houses, outhouses, edi-

fices, barns, stables, yards, gardens, orchards,

backsides, commons, and common of pasture,

mills, fish ponds, waters, watercourses, ways,

passages, rights, profits, commodities, advan-

tages, emoluments, hereditaments, and ap-

purtenances to the said messuage or tenement,

mills, lock, hereditaments and premises, or

any part thereof belonging, or in anywise ap-

pertaining, or therewith usually held, &c.

and the reversion, &c. and all the estate, &c.

of them the said J. M. and W. J. and J. R.

and of every of them, of, in, to and out

of the same and every part thereof; and all

deeds, evidences, and writings whatsoever re-

lating to, or in anywise concerning the same

hereditaments only, or only any part thereof,

which the said J. M. and W. J. and J. R.

or any of them now have or hath in their or

his custody or power, or can or may obtain

without suit at law or in equity, together

with true attested copies of all such other

deeds, evidences, and writings now in the

custody or power of the said J. M. and W. J.

and J. R. or any of them, as relate to or

General
words.

Grant of
deeds.

concern the same hereditaments jointly and together with any other hereditaments, such of the same copies as shall not be demanded until after the execution of these presents, to be written and taken at the proper costs and charges of the said *J. A.* his heirs and assigns, *To have and to hold* the said messuage or tenement, mills, lock, piscary, and hereditaments herein before expressed to be hereby granted and released, with their and every of their appurtenances unto the said *J. A.* his heirs and assigns, *to the use* of him the said *J. A.* his heirs and assigns for ever, and to or for no other use, intent, or purpose whatsoever. *To hold of purchaser in fee.*

(Covenant from the trustees that they have not incumbered the premises, and from J. R. that they are seized in fee, that they and he have good right to convey, for quiet enjoyment, and further assurance). And whereas in regard that the indentures of lease and release herein before recited, concern or relate to not only the title to the hereditaments and premises herein before expressed to be hereby granted and released, but also to the title of divers other hereditaments, being also the estate of the said *J. R.* and of greater value than the hereditaments hereby conveyed, it hath been agreed between the said parties hereto, that the same indentures of lease and release which are now in the custody or possession of the said *J. R.* shall be and remain in his custody or possession for the purposes herein after mentioned. *Now* *Covenant to produce title deeds.* *this indenture further witnesseth,* that for the considerations aforesaid, the said *J. R.* doth hereby for himself, his heirs, executors and administrators, covenant and agree with the said *J. A.* his heirs and assigns, that the said *J. R.* his heirs, executors, administrators or assigns, shall and will from time to time, and at all

times hereafter upon every reasonable request and at the proper costs and charges in the law of the said *J. A.* his heirs or assigns, unless hindered or prevented by fire or other inevitable accident, produce and shew forth, or cause to be produced and shewn forth unto the said *J. A.* his heirs and assigns, or to his, their or any of their counsel, attornies, agents, solicitors, or at any trial or hearing in any court of law or equity, or otherwise, as occasion shall be and require, and also shall and will at all times hereafter, at the like request, costs and charges, permit and suffer copies to be made and taken by any person or persons whomsoever, of the said indentures of lease and release herein before recited, or either of them, for the better evidencing, maintaining, defending, and proving the title to the said *J. A.* his heirs and assigns, of in and to the hereditaments and premises so conveyed to him and them as aforesaid, or any part or parcel thereof; and also shall and will in the mean time keep and preserve the same indentures of lease and release safe, undefaced, unobliterated and uncanceled (damage by fire or other inevitable accident only excepted). *In witness, &c.*

* *Release and confirmation, being a conveyance from a mortgagee and mortgagor to a purchaser.*

Parties.

THIS Indenture made, &c. between *A. B.* of, &c. of the first part, *C. D.* of, &c. of the second part, and *E. F.* of, &c. of the third part (*recite the mortgage from C. D. to A. B.*

being a mortgage in fee). And whereas default was made in payment of the said sum of £—— at the time stipulated for payment thereof in the aforesaid proviso, whereby the estate and interest of the said *A. B.* of and in the said premises, became absolute at law, and legally vested in him. And whereas there is now due and owing to the said *A. B.* for principal and interest on this said in part recited security, the sum of £——. And whereas the said *E. F.* hath contracted and agreed with the said *C. D.* for the absolute purchase of the fee simple and inheritance of the messuage or tenements, hereditaments, and premises, at or for the price or sum of £—— out of which it hath been agreed the said mortgage to the said *A. B.* shall be paid off and discharged. Now this indenture witnesseth, that in pursuance of the premises, and for and in consideration of the sum of £—— of, &c. to him the said *A. B.* in hand well and truly paid by the said *E. F.* upon or immediately before the sealing and delivery of these presents, in full of all principal and interest due to the said *A. B.* upon his said in part recited mortgage, the receipt, &c. and also, for and in consideration of the further sum of £—— residue of the said purchase money, to the said *C. D.* in hand well and truly paid by the said *E. F.* upon or immediately before the sealing and delivery of these presents, the receipt of which said sum of £—— and that the same, together with the said sum of £—— herein before expressed to have been paid to the said *A. B.* as aforesaid, is in full, for the complete and absolute purchase of the said hereditaments and premises, he the said *C. D.* doth hereby confess and acknowledge, and thereof and of and from every part and

And that default was made in payment of the money due thereon.

And that there is now due for principal and interest £——.

Contract for purchase recited.

And that it hath been agreed that the mortgage shall be paid out of the purchase money.

Consideration.

Mortgagee
with the
consent of
mortgagor
bargains,
sells and re-
leases.

And mort-
gagor fully
and abso-
lutely
grants, re-
leases, rati-
fies and
confirms.

To hold

to the use
of purchaser
in fee.

parcel thereof doth acquit, release, exonerate, and for ever discharge the said *E. F.* his heirs, executors, administrators and assigns, and every of them for ever, by these presents, he the said *A. B.* at the request and by the direction and appointment of the said *C. D.* testified by his being made a party to and sealing and delivering of these presents, *hath* bargained, sold, aliened, released, and confirmed, and by these presents *doth* at the like request and by the like direction testified as aforelaid, bargain, sell, alien, release and confirm, and the said *C. D.* *hath* fully and absolutely granted, bargained, sold, aliened, released, ratified, and confirmed, and by these presents *doth* fully and absolutely grant, bargain, sell, alien, release, ratify and confirm unto the said *E. F.* (in his actual possession, &c.) and to his heirs and assigns, all, &c. (*parcels with general words*) *To have and to hold* the said messuages or tenements, hereditaments and premises hereby granted and released, ratified and confirmed, or expressed or intended so to be, with their and every rights, members and appurtenances unto the said *E. F.* his heirs and assigns, *To the use and behoof* of the said *E. F.* his heirs and assigns for ever, and to and for no other use, intent or purpose whatsoever (*Covenant from mortgagee that he has done no act to incumber, and from the mortgagor for the right, title, peaceable possession, and for further assurance.*) In witness, &c.

* *Release and assignment by husband and wife, on the latter's attaining twenty-one, of her fortune given under her father's will.*

THIS Indenture made, &c. between G. T. of, &c. and S. his wife, which said S. is the eldest daughter and one of the devisees named in the last will and testament of R. J. late of, &c. deceased, of the one part, and J. P. of, &c. of the other part, (*reciting will of J. R. whereby he gave certain messuages, &c. to R. O. and D. H. upon trust, to apply the rents and profits to P. F. his housekeeper, during her life, and after her decease to apply the same towards the education of children till the eldest attained twenty-one, and then to sell the same and pay the purchase money equally amongst all his children, and gave the residue of his effects to be placed out in the public funds upon the same trusts, reciting also the death of testator, and probate of the will by his executors.*) And whereas the residue of the said testator's estate and effects is vested in the purchase of £——— 3 per cent. India annuities, which are standing in the names of the said executors. And whereas the said R. J. left five children at the time of his decease him surviving, namely S. J. M. J. A. J. C. J. and R. J. all of whom are still living except the said R. J. since deceased. And whereas the said D. H. departed this life on or about, &c. and thereupon the said trust premises devolved upon the said R. O. by survivorship. And whereas the said S. one of the aforesaid children, hath since attained the

Contract
for sale re-
cited.

age of twenty-one years, and hath since inter-married with the aforesaid *G. T.* *And whereas* the said *G. T.* and *S.* his wife, have agreed with the said *J. P.* for the absolute sale to him of the principal sum of £—— of lawful money of Great Britain, part of such share, part or proportion, shares, parts, or proportions of the said *G. T.* and *S.* his wife, in the monies to be produced by the sale of the said sum of £—— 3 per cent. annuities, the said monies to arise by the sale of the said freehold premises in and by the above in part recited will, given and bequeathed to the said *R. C.* and *D. H.* which will be coming due to them the said *G. T.* and *S.* his wife, by virtue of the said in part recited will, in case the said *S.* shall survive the said *P. F.* at or for the price or sum of £—— of, &c. *Now this indenture witnesseth,* that for and in consideration of the sum of £—— of, &c. to the said *G. T.* and *S.* his wife in hand, &c. they the said *G. T.* and *S.* his wife *have,* and each of them

Assignment
and release.

hath granted, bargained, sold, assigned and released, and by these presents *do,* and each of them *doth* grant, &c. unto the said *J. P.* his executors, administrators and assigns, all that the sum of £—— of lawful money of Great Britain, part of such share, part and proportion, parts, shares and proportions of the said sum of £—— 3 per cent. India annuities, being the residue of the said testator's personal estate so directed to be put out at interest as aforesaid, and also of and in the money to arise by the sale and disposal of the said freehold premises given and devised by the said recited will, to the said *R. C.* and *P. H.* upon the trusts aforesaid, as shall at any time or times hereafter become due to them the said *G. T.* and *S.* his wife, or either of them,

by or upon the decease of the said *P. F.* in the lifetime of the said *S.* the wife of the said *G. T.* or by or upon the decease of the said *M. J. A. J.* or *C. J.* or either of them, in the lifetime of the said *P. F.* or otherwise howsoever, and all the contingent estate, right, title, interest, equity, benefit, claim or demand, both at law and in equity whatsoever, of the said *G. T.* and *S.* his wife, and of each of them, of, in, to or out of the said sum of £—— part of the said share, part or proportion, shares, parts or proportions of the said £—— 3 per cent. India annuities, and the money to arise by the sale of the said freehold premises as aforesaid, and every or any part thereof by force and by virtue of the said recited will of the said *R. J. to have, hold, receive, perceive, and take the said hereby assigned premises, and every part thereof, unto the said J. P. his executors, administrators, and assigns, to his and their own use absolutely for ever; And the better to enable the* Power of attorney. said *J. P. his executors, administrators and assigns, to have and receive the sum of £—— of, &c. part of the share, part or proportion, shares, parts or proportions of the said testator's real and personal estate to which the said *G. T.* and *S.* his wife, will be entitled on the contingencies aforesaid, they the said *G. T.* and *S.* his wife *do* and each of them *doth* hereby make, ordain, constitute and appoint the said *J. P. his executors, administrators and assigns, their and each of their true and lawful attorney and attornies, irrevocably for and in the name of them the said *G. T.* and *S.* his wife, and of either of them, or in his or their own name or names, or otherwise, but for the sole use and benefit of him the said *J. P. his executors, administrators and as-***

signs, to ask, demand, sue for, recover and receive of and from *R. O.* the surviving trustee of the said trust premises, or of or from the trustees or trustee for the time being, in whom the said trust premises are or shall become severally vested, and of and from all and every persons or person liable to the payment thereof, all that the said sum of £—— part of such share, part or proportion, parts, shares or proportions of the same premises respectively as the said *G. T.* and *S.* his wife, or either of them shall or may become entitled to by or upon the decease of the said *P. F.* in the lifetime of the said *S.* the wife of the said *G. T.* or by or upon the decease of the said *M. J.* *A. J.* or *C. J.* or either of them, in the lifetime of the said *P. F.* and upon the receipt thereof, or of any part thereof, receipts, acquittances and other effectual discharges for them the said *G. T.* and *S.* his wife, or either of them, and in their or either of their names or name, or in his or their own name or names, to make and give, and upon non-payment thereof, or of any part thereof, when the same shall become due, to sue forth, bring, commence and prosecute such bill, plaint, or other process either at law or in equity, or otherwise, for the recovery thereof as he or they shall be advised, and one or more attorney or attornies for the purposes aforesaid, to make, nominate, and at pleasure to revoke, and generally to do and act in the premises for the recovering and obtaining of the said sum of £—— part of the said share, part or proportion, shares, parts or proportions of the said *G. T.* and *S.* his wife, of and in the said residue and remainder of the said testator's real and personal estate on the contingencies aforesaid, in as full, ample, and

beneficial manner to all intents and purposes as they the said *G. T.* and *S.* his wife, or either of them might or could do, if actually present, giving and hereby granting unto the said *J. P.* his executors, administrators and assigns, the full and whole power of them the said *G. T.* and *S.* his wife, and of each of them in the premises, hereby ratifying, confirming and allowing all and whatsoever the said *J. P.* his executors, administrators or assigns, or his or their attorney and attornies, shall lawfully do or cause to be done, in or about the premises, by virtue of these presents.

And the said *G. T.* for himself, his executors and administrators, and for the said *S.* his wife, doth covenant, promise and agree to and with the said *J. P.* his executors, administrators and assigns, by these presents, in manner following, that is to say, that they the said *G. T.* and *S.* his wife, or either of them, have not at any time heretofore received, compounded, released or discharged, or consented to the receiving, compounding, releasing or discharging the said £—— part of the contingent share, part or porportion, shares, parts or proportions of the said *G. T.* and *S.* his wife, of and in the said £—— 3 per cent. India annuities, and premises, nor done, suffered, committed or consented unto any act, deed, matter or thing whatsoever, whereby the same may be extinguished, impeached, charged or incumbered in any manner or wise; and that they the said *G. T.* and *S.* his wife, or either of them, shall not nor will at any time hereafter, receive, compound, release, or discharge the same or any part thereof, but by and with the consent and direction, and to and for the only use, benefit

Covenant
that grantor
hath not
released or
incumbered
the pre-
mises.

and behoof of the said *J. P.* his executors, administrators and assigns, and shall not, nor will revoke or make void the power or authority hereby given (*Covenant for further assurance.*) In witness, &c.

* *Release of Annuities.*

THIS Indenture of five parts made, &c. between *I. V.* of, &c. widow of *T. V.* late of, &c. Esq. deceased, of the first part, *T. V.* of, &c. one of the three younger sons of the said deceased *T. V.* by the said *I. V.* of the second part, *R. V.* of, &c. the eldest son and heir of the said *T. V.* the father, by the said *I. V.* of the third part, *D. E.* of, &c. Esq. (a trustee on the behalf of the said *R. V.* of part of the hereditaments comprized in the hereinafter mentioned term of five hundred years) of the fourth part, and *I. M.* of, &c. the only acting executor of *T. D.* who survived *I. S.* of the fifth part. *Whereas* by indentures of lease and release, bearing date, &c. (inrolled in his Majesty's High Court of Chancery) the release being quinquupartite, and made or expressed to be made between the said *T. V.* deceased, and *I. V.* Gent. of the first part, the said *I. S.* and *T. D.* of the second part, *W. M.* of the third part, *I. P.* of the fourth part, and the said *I. V.* by her then name and addition of *I. S.* spinster, of the fifth part; and by a common recovery thereupon duly had and suffered in the Court of Common Pleas, at Westminster, wherein the said *T. V.* deceased, was vouched, and vouched over the common vouchee, all those the manors, &c. therein particularly mentioned and described, were limited (after the solemnization of the

marriage then intended, and soon afterwards had between the said *T. V.* deceased and *I. V.*) to the use of the said *T. V.* deceased and his assigns for his life, with a limitation to a trustee and his heirs during the life of the same *T. V.* to preserve the contingent uses therein after limited, and after the decease of the said *T. V.* to the use and intent that the said *I. V.* (in case she survived him) might receive and take out of the rents and profits of the said manors and hereditaments during her natural life, the clear rent or sum of £ — to be payable at the place and times, and in manner mentioned in the said indenture of release, with the power and remedies by the same indenture given and provided to or for the said *I. V.* for enabling her to recover the said rent or sum of £ — when in arrear and subject thereunto, to the use of the said *I. S.* and *T. D.* their executors administrators and assigns, for the term of five hundred years, upon the trusts therein and herein after mentioned, and from and after the expiration or sooner determination of the same term, to the use of the first and every other son of the said *T. V.* deceased, by the said *I. V.* successively in tail male, with divers remainders over; and it is by the said indenture of release declared that the said term of five hundred years was limited to the said *I. S.* and *T. D.* upon certain trusts which never arose and cannot now arise; *And also* upon trust, that if there should be more than two younger sons of the said then intended marriage, that the said *I. S.* and *T. D.* and the survivor of them, his executors administrators and assigns, should after the decease of the said *T. V.* deceased, raise £ — a year, clear of all deductions for each of such younger sons during the life of such annuitant; but in case any of the said

RELEASES.

younger sons should when fit, in the judgment of the said *I. V.* and of the said *I. S.* and *T. D.* or the survivor or survivors of them, his or her executors or administrators, to be placed out to any business or trade, chuse to be so placed out, that then in lieu of such annuity of any such son so chusing to be placed out, or any part thereof, the said *I. S.* and *T. D.* or the survivor of them, or the executors, administrators, and assigns of such survivor, should have power to raise and pay what sum or sums in the judgment of the said *I. V.* and the said *I. S.* and *T. D.* or the survivors or survivor of them, or the executors, administrators or assigns of such survivor, should be equivalent to the value of all, or so much of the annuities or annuity of such son or sons respectively, so chusing to go into trade or business, and he or they to relinquish all or so much of their or his annuity or annuities respectively, and from thenceforth such annuity or annuities, or so much thereof as aforesaid should cease. *And whereas* the said *T. V.* the father, many years ago departed this life, leaving issue by the said *I. V.* the said *R. V.* his eldest son and heir and *F. V.* and the said *T. V.* (party hereto) and *G. V.* his only younger sons, and a daughter named *I.* who died under the age of twenty-one years, and without having been married. *And whereas*, by indentures of lease and release, bearing date, &c. (inrolled in the said Court of Chancery) the release being of three parts, and made or expressed to be made, between the said *R. V.* of the first part, *S. S.* Gent. of the second part, and *I. R.* Gent. of the third part; and by a common recovery thereupon duly had and suffered in the said Court of Common Pleas, wherein the said *R. V.* was vouched, and vouched over the common vouchee, the estate

tail, in and by the said in part recited indenture of release and settlement, limited or declared to, or to the use of the first son of the said *T. V.* deceased, by the said *I. V.* of and in the manors, &c. in the same indenture comprized, and of which said estate, the said *R. V.* was then seized, and all remainders and reversions expectant or dependent thereupon, were barred and destroyed, and the same manors, &c. were limited and assured, *to the use of the said R. V. his heirs and assigns for ever, subject nevertheless, and without prejudice to the said yearly rent or sum of £—— and to all remedies and powers for recovering the same, or in any wise relating thereto, and also to the said term of five hundred years, and to all the trusts of the same term which were then subsisting undetermined or capable of taking effect.* *And whereas* the said *T. D.* having survived the said *I. S.* made and duly executed his last will and testament in writing and thereby appointed his wife *A. D.* and the said *I. M.* executor and executrix thereof, and soon afterwards departed this life without revoking or varying such appointment, and on his decease the said *I. M.* alone accepted the executorship of his said will, and duly proved the same in the prerogative Court of the Archbishop of Canterbury. *And whereas,* the said *G. V.* hath received a compensation for his said annuity of £—— and hath accordingly released and assigned the same to the said *R. V.* *And whereas* the said *I. V.* at the instance and request of the said *R. V.* agreed to assign and release to the said *R. V.* and his heirs, the said annual sum or yearly rent charge of £—— to which the said *I. V.* is so entitled by or under the said indenture of the —— day of —— aforesaid; and the said

First re-
lease.

Covenant
against in-
cumbrances.

T. V. (party hereto) hath at the like instance and request of the said *R. V.* agreed to assign and release to the said *R. V.* and his heirs, the said annuity or annual sum of £—— and the sum of money for the purchase or equivalent thereof to which he the same *T. V.* is or might become entitled by or under the same indenture of the —— day of, &c. *Now this indenture witnesseth*, that in pursuance and performance of the said agreement on the part of the said *I. V.* and in consideration of 10s. of &c. by said *R. H.* to said *I. V.* paid at or before the execution thereof, she the said *I. V.* hath, with the privity and approbation of the said *E. D.* testified by his being a party to and executing these presents, granted bargained, sold, assigned and released; and by these presents doth grant, &c. unto the said *R. V.* his heirs and assigns, all that the said annual sum or yearly rent charge of £—— limited and secured to her the said *I. V.* by the said indenture of release of the —— day of, &c. as aforesaid, and all arrears thereof, and all powers or remedies for recovering or compelling payment thereof; and all the estate, &c. whatsoever, as well legal as equitable of her the said *I. V.* of in to or out of the same annual sum or yearly rent charge or the arrears thereof, to the intent that the same annual sum or yearly rent charge may forthwith sink into and be consolidated with the manors, &c. charged with the payment thereof, and be utterly extinguished, annihilated and destroyed; And the said *I. V.* for herself, her heirs executors and administrators, doth covenant, declare, and agree to and with the said *R. V.* his heirs and assigns, by these presents, that the said *I. V.* hath not done or committed, or wittingly or willingly suffered any act, measure, or thing whatsoever, to re-

lease, assign, charge, affect, or incumber the said annual sum or yearly rent charge of £—— or the arrears thereof, or any part thereof respectively. *And this indenture further witnesseth,* that in pursuance and performance of the said agreement, on the part of the said *T. V.* (party hereto) and in consideration of ten shillings, &c. he the said *T. V.* (party hereto) with the privity and approbation of the said *D. E.* testified as aforesaid, *hath* granted, bargained, sold, assigned and released, and by these presents *doth* grant, &c. unto the said *R. V.* his heirs and assigns, all that the said annuity or yearly sum of £—— provided or secured for him the same *T. V.* and to which he is become entitled to as one of the younger sons of the said *T. V.* deceased, and *I. V.* by and under the said recited indenture, and all arrears thereof; and also all that the sum of money to which the said *T. V.* (party hereto) might or could become entitled to under the said indenture of release of, &c. as the purchase of, or as an equivalent for the said annuity or yearly sum of £—— provided or secured for him the said *I. V.* (party hereto) as aforesaid, and the interest for the same; and all the estate, &c. of in to or out of the said annual and gross sum of money, and each of them, and the arrears and interest thereof respectively, to the intent that the same annuity or gross sum of money, may forthwith sink into the said manors, &c. charged with the payment thereof, and be utterly extinguished, annihilated and destroyed [Like The like Covenant from *L. C.* (party hereto) that he hath not encumbered.] *In witness, &c.*

* *Release of a Legacy.*

TO all to whom these presents shall come, T. S. of, &c. Esq. and S. his wife, formerly S. P. spinster, one of the daughters of A. P. deceased, send greeting. Whereas, the said A. P. did in and by his last will and testament in writing, bearing date, &c. give to the said S. S. then S. P. a legacy or sum of £— and appointed C. D. E. F. and G. H. executors of his said will; and they the said C. D. E. F. and G. H. soon after the decease of the said A. P. duly proved the same, in the prerogative court of the Archbishop of Canterbury, and took upon themselves the execution thereof. Now these presents witness, that the said T. S. and S. his wife, do hereby acknowledge to have had and received of the said C. D. E. F. and G. H. the sum of £— so by the will of the said A. P. bequeathed to the said S. S. and all interest which hath accrued due thereon until and up to the day of the date of these presents. And that of and from the same sums of £— and the interest thereof, and every part thereof respectively, they the said T. S. and S. his wife, do, and each of them doth by these presents, for ever acquit, release, and discharge the said C. D. E. F. and G. H. and each and every of them, their, and each and every of their heirs, executors and administrators, and their and every of their estates and effects whatsoever and wheresoever, late of the said A. P. for ever. And also, that the said T. S. for himself, his heirs, executors, and administrators, and for the said S. his wife, and she the said S. S. so far as in her lies for herself, her heirs, executors and administrators, do, and each of them doth by these presents, remise, release, and for

Recites the will.

Appointment of executors.

And their acceptance of the execution.

Release.

ever quit claim unto the said *C. D. E. F.* and *G. H.* and each and every of them, and their, and each and every of their heirs, executors and administrators; all and every action and actions, suit and suits, cause and causes of action, or other claims and demand whatsoever, of them the said *T. S.* and *S.* his wife, or either of them, for, or in respect of the said sum of £—— or the interest thereof, or any part thereof respectively. *In witness, &c.*

** Release of Dower.*

TO all to whom these presents shall come, M. P. the widow and relict of *G. P.* late of, &c. gentleman, deceased, sends greeting. *Whereas*, the said *M. P.* as the widow and relict of the said *G. P.* is entitled to her dower and thirds, at the common law, of, in, to, or out of one full moiety or half part, the whole into two equal parts being divided, of and in the manor, &c. late belonging to —— deceased, which said manor, &c. have been lately sold and conveyed unto, and to the use of *J. E.* of, &c. Esq. his heirs and assigns, for the sum of £—— and upon the treaty for the sale of the said premises, the said *G. P.* did agree that the said manor and premises should be held and enjoyed by the said *J. E.* his heirs and assigns, freed and discharged of and from her dower and thirds, and all claims and demands of her the said *M. P.* for or in respect of the same or otherwise, *And* for that end, she did propose and agree to release and quit claim unto the said *J. E.* his heirs and assigns, all her right and title of dower, and all other claims and demands of her the said *M. P.* in

to or out of the said manor and premises herein after mentioned. *Now know ye*, that in consideration of the said sum of £—— paid by the said *J. E.* for the purchase of the said manor and premises, and for effectuating the intent and purpose aforesaid, and in pursuance and performance of the said herein before mentioned proposal and agreement on the part of the said *M. P.* in this behalf, and in consideration of the sum of 10s. of, &c. to the said *G. P.* paid by the said *J. E.* upon, or immediately before the delivery of these presents, she the said *M. P.* hath granted, remised, released, and for ever quitted claim, *and by these presents doth grant*, &c. unto the said *J. E.* his heirs and assigns, all the dower or thirds, and right and title of dower or thirds, at the common law or otherwise, which she the said *M. P.* hath, or can, or may, or otherwise might have, claim, challenge, or demand of, in, to, or out of all and singular the manor, &c. late belonging to the said ——— deceased, and which have been so sold and conveyed unto the said *J. E.* his heirs and assigns, as aforesaid; *And of, in, to, and out of the rights, members, and appurtenances thereunto belonging.* And all other, the estates, right, title, interest, property, claim and demand, both at law and in equity of her the said *M. P.* of, in and to the said manor and premises, and every part thereof; *to the end and intent*, that the said manor and premises shall and may be held and enjoyed by the said *J. E.* his heirs and assigns, freed and absolutely discharged of and from the dower or thirds, and all other claims and demands of her the said *M. P.* and that all and every person and persons claiming, or to claim, by from or under, or in trust for her, shall and may be effectually barred, and for ever ex-

cluded by these presents, of and from her dower or thirds, and all other claims and demands whatsoever, of in to or out of the said premises and every or any part thereof. *In witness whereof, &c.*

Of REVOCATIONS.

A Revocation is an instrument by which some deed or power previously given is rendered void. It is applied chiefly to *wills* and to *uses*.

A will may be revoked either expressly or by implication.

An express revocation is effected by the publication of another will or codicil, or some other writing declaring such intent, or "by burning, cancelling, tearing, or obliterating the same, by the testator himself, or by some person in his presence, and by his direction and consent." 29 *Car.* 2. c. 3. which new will, &c. it has been held, must be in all respects a valid will, or it will not amount to a revocation of the former. 1 *Show.* 89. 2 *Atk.* 272. (Sed vid. 3 *Mod.* 218. 9 *ib.* 190. 10. *ib.* 237.) and the cancelling, &c. men-

Of REVOCATION.

tioned in the statute must be with an *intent* to cancel, or the will will still be good though defaced. 1 *Pere. Wms.* 346.

And it has likewise been held that a will may be revoked in part only by a partial obliteration of particular bequests, *Cowp.* 812.

Revocations of wills may also be effected by subsequent alteration in the circumstances of the testator, or of the estate devised, as in the case of a subsequent marriage and issue, which it is supposed must inevitably have produced a change in his mind, relative to the disposition of his property, *Doug.* 31. 35. 38. 4 *Bur.* 2171. 2182. and upon a similar ground the sale or other legal transfer of the estate, &c. devised, will be a revocation either wholly or in part, according to the nature and extent of the transfer. 1 *Atk.* 576. 2 *ib.* 325. 1 *Vern.* 329.

USES are also revocable, and new uses may be declared at any future time, provided the grantor has reserved such a power in the deed creating the estate. 3 *Blac.* 335.

See more of revocation of uses, *Bac. Uses* 316. *Lil. Conv.* 285. And of Wills *post*, Title WILLS.

* *Deed of Revocation and Appointment.*

THIS Indenture tripartite, made, &c. be- ^{Parties.}
 tween *A. B.* of, &c. and *M.* his wife of the
 first part, *C. D.* of, &c. of the second part, and ^{Recital of}
E. F. of, &c. of the third part: *Whereas*, by ^{the deed re-}
 indentures of lease and release, bearing date ^{serving the}
 respectively, &c. the release being tripartite,
 and made or mentioned to be made between the
 aforesaid *M. B.* by her then name of — of, &c.
 widow and relict of — late of —
 deceased of the first part, *W. R.* and *S. U.*
 of the same place Gents. of the second part,
 and the said *A. B.* of the third part. *It is wit-*
nessed, that the said *M. B.* in consideration
 of a marriage then intended between her and
 the said *A. B.* and for other considerations
 therein mentioned, *did* grant and release
 amongst other messuages, tenements and here-
 ditaments, *all*, &c. to hold the said mes-
 suage or tenement, stable, brewhouse and
 premises, with the appurtenances, unto the
 said *W. R.* and *S. U.* their heirs and assigns,
 to the use of the said *M. B.* then *M. R.*
 and her heirs, until the said marriage: and
 after the solemnization thereof, *to the use of*
 the said *A. B.* and the said *M.* his then in-
 tended wife, for their lives and the life of the
 survivor of them; with remainder to the use
 of the said *W. R.* and *S. U.* and their heirs,
 in trust, to preserve contingent remainders
 with remainder to the use of all and every the
 child and children, as well male as female,

REVOCATION.

of the said *A. B.* on the body of the said *M.* to be begotten, to be equally divided between them, if more than one, as tenants in common, and not as joint tenants, and of the heirs of their body and bodies respectively, with remainders to the use of such person and persons, and for such estate and estates, use and uses, as the said *M.* should at any time thereafter, by deed, or by her last will and testament, to be executed respectively in manner therein mentioned, notwithstanding her coverture, or whether sole or married, should declare, limit or appoint, of or concerning the said premises, or any part thereof, and for want of such appointment, to the use of the right heirs of the said *M.* for ever. In which said indenture of release is contained a proviso that after the solemnization of the said then intended marriage, in case the said *A. B.* and *M.* his wife should at any time or times, or from time to time, during their joint lives, find it necessary to settle or dispose of the premises therein and herein before mentioned, or any part thereof, in any other manner than as aforesaid, it should be lawful to and for the said *A. B.* and *M.* his wife, at any time or times, and from time to time, when and as often as they should find it necessary or expedient, during their joint lives, by any deed or deeds, writing or writings, under their hands and seals, to be executed in the presence of two or more credible witnesses, to alter, revoke, or make void all and every or any of the use and uses, trusts intents and purposes therein before limited, expressed or declared; and by the same deed or deeds, writing or writings, or by any other deed or writing in like manner executed, to limit, de-

clare and appoint, any new or other use or
 uses, of or concerning the said premises, or
 any part thereof, and with power of revoca-
 tion, or without, and in such manner as they
 the said *A. B.* and *M.* his then intended wife
 should think fit, as by the above in part recited
 indentures, relation being thereto had, will
 more fully appear; *And whereas*, since the
 making or executing the said above in part ^{Agreement}
 recited indentures the said marriage took ef- ^{for sale.}
 fect, and the said *A. B.* and *M.* his wife find-
 ing it expedient to sell and dispose of the said
 messuage or tenement, stable and brewhouse,
 herein before particularly mentioned, being
 part of the said premises comprized in the said
 indentures, they the said *A. B.* and *M.* his
 wife have contracted and agreed with the said
C. D. for the absolute sale to him of the same
 messuage or tenement, stable, brewhouse and
 premises, and which are herein after more
 particularly described with the appurtenances,
 at or for the price or sum of £—— *Now this* ^{Considera-}
indenture witnesseth, that in consideration of the ^{tion.}
 premises and in pursuance of the said recited
 contract or agreement for the said sale as
 aforesaid, *And also* in consideration of the sum
 of £—— of &c. to the said *A. B.* and *M.* his
 wife, in hand well and truly paid by the said
C. D. upon or before the sealing and delivery of
 these presents, the receipt, &c. They the
 said *A. B.* and *M.* his wife, *have* and each of
 them *bath* revoked determined and made void,
 and by this present deed or writing under ^{Revocation}
 their hands and seals, and by them sealed and
 delivered in the presence of the two persons
 whose names are intended to be hereupon in-
 dorsed as witnesses attesting the due execu-
 tion hereof, by virtue, in pursuance, and in

REVOCATION.

New ap-
pointment.

To the use
of purcha-
ser and his
trustee to
bar dower.

due exercise of the power or authority so given or reserved in or by the said above-mentioned in part recited indenture of release in this behalf, and by virtue and in pursuance and execution of all and every other the said powers or authority, them or either of them in any case enabling, *Do*, and each of them *doth* revoke, determine, and make void, all and every the use and uses, trusts, estates, powers, provisoes and limitations, in or by the said in part recited indenture of release limited, created, or declared, of and concerning *all that* the said messuage, &c. *And this indenture further witnesseth*, that in consideration of the premises, and in further pursuance and performance of the said recited agreement, they the said *A. B.* and *M.* his wife, *have* and each of them *hath* limited, declared, and appointed, and by these presents *do*, and each of them *doth* limit, declare and appoint, *that all that* the said messuage or tenement, stable or brewhouse, and all and singular other the premises hereinbefore particularly mentioned and described, and whereof the uses declared in and by the said above in part recited indenture, are so hereby revoked as aforesaid, or intended so to be; together with all and every the rights, members and appurtenances to the said messuage or tenement, brewhouse and stable belonging, shall from henceforth remain, continue, and be *to the only proper use and behoof* of the said *C. D.* and *E. F.* and the heirs and assigns of the said *E. F.* for ever; but nevertheless as to the estate and interest of the said *E. F.* his heirs and assigns; *in trust* only for the said *C. D.* his heirs and assigns for ever, freed and absolutely discharged

of and from all and every the use and uses trusts, estates, powers, provisoes and limitations, in or by the above in part recited indenture of release expressed or declared, of and concerning the same premises, and of and from all other use and uses, trusts, estates, powers, provisoes and limitations whatsoever. And the said *A. B.* for himself, his heirs, executors, and administrators, and for the said *M.* his wife and her heirs, doth covenant, declare, and agree, to and with the said *C. D.* his heirs and assigns, by these presents, that they the said *A. B.* and *M.* his wife, have not at any time heretofore made, done, or committed, or wilfully suffered to be done any act matter or thing whatsoever, whereby or by reason or means whereof the premises hereby limited and appointed, or intended so to be, or any part thereof, now are or is or hereafter can shall or may be in any wise charged or incumbered, or whereby, or by reason or means whereof the said power or authority so given or reserved to them, in or by the said above in part recited indenture of release as aforesaid, now is or hereafter can, shall, or may be in any respect impeached, forfeited, or otherwise become void or voidable. *And this indenture further witnesseth*, that for the consideration aforesaid, and in particular of the said sum of £— so paid by the said *C. D.* to the said *A. B.* and *M.* his wife as aforesaid; and also in consideration of the sum of five shillings of &c. to the said *A. B.* in hand paid by the said *E. F.* upon or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; they the said *A. B.* and *M.* his wife, *have*, Grant and and each of them *bath* granted, bargained, release.

sold, aliened and released, and by these presents at the request and by the direction and appointment of the said *C. D.* testified by his being a party to, and executing these presents, *do*, and each of them *doth*, grant, bargain, sell, alien, and release unto the said *C. D.* and *E. F.* and the heirs and assigns, of the said *E. F.* *all that* the aforesaid messuage or tenement, stable and brewhouse, and all and singular other the premises hereinbefore particularly mentioned and described, and hereby limited and appointed, or mentioned or intended so to be, with all and every the rights, members, liberties, privileges and appurtenances whatsoever, to the same premises or any part thereof belonging, or in any wise appertaining, or to or with the same at any time heretofore held, used, occupied or enjoyed, or accepted reputed deemed taken or known as part parcel or member thereof, or of any part thereof, or as in any wise belonging thereunto (all which premises are now in the actual possession of the said *C. D.* and *E. F.* &c.) and the reversion and reversions, remainder and remainders, yearly or other rents, issues and profits of the premises hereby granted and released, or intended so to be, and all the estate, right, title, interest, use, trust, possession, property, claim and demand whatsoever, both at law and in equity, of the said *A. B.* and *M.* his wife, or either of them, of, into, or out of the premises hereby released or intended so to be, or any part thereof, together with all deeds, evidences and writing whatsoever, in the custody or power of them the said *A. B.* and *M.* his wife, or either of them touching or concerning the same premises, or any part

thereof, only, or which they can come by without suit at law, or in equity, and true copies of all such other deeds, evidences and writings, as relate to, or concern the said premises or any part thereof, jointly, or together with other tenements or hereditaments of greater value, all present copies to be made or written out at the proper costs and charges of the said *A. B.* but all future copies at the proper costs and charges of the said *C. D.* his heirs, executors, administrators or assigns; *To have To hold and to hold*, the said messuage or tenements, stable and brewhouse, and all and singular other the premises hereby granted and released, or intended so to be, with their and every of their appurtenances unto the said *C. D.* and *E. F.* their heirs and assigns, *to the only proper use and behoof* of them the said *C. D.* and *E. F.* and the heirs and assigns of the said *E. F.* but nevertheless, as to the estate and interest of the said *E. F.* his heirs and assigns, *in trust* only for the said *C. D.* his heirs and assigns for ever. And the said *A. B.* for himself, his heirs, executors and administrators, and also for the said *M.* his wife and her heirs, doth covenant promise and agree, to and with the said *C. D.* his heirs and assigns, by these presents, that they the said *A. B.* and *M.* his wife and their heirs, shall and will at the proper costs and charges in the law of the said *C. D.* his executors or administrators, or some of them, as of this present Easter term, next Trinity term, or some other subsequent term, in due form of law acknowledge and levy before his Majesty's justices of the court of Common Pleas at Westminster, to the said *C. D.* and *E. F.* and the heirs of the said *E. F.* one or more fine or

to purchaser and his trustee.

Covenant to levy a fine.

Usual cove-
nants.

finer, *sur conusance de droit come ceo*, &c. with proclamations according to the form of the statute in that case made and provided and according to the usual form of levying fines for assurances of lands and tenements of and concerning the premises hereby limited and released respectively, or intended so to be, with the appurtenances, by such apt and proper name or names, quantities, qualities, and other certainties and descriptions, as shall be thought most fit to comprize and pass the same. And further, that for and notwithstanding any act, matter, or thing whatsoever, at any time heretofore made, done, or committed, or wilfully suffered to be done by them the said *A. B.* and *M.* his wife, or either of them; they the said *A. B.* and *M.* his wife, at the time of the sealing and delivery of these presents, have in themselves good right, full power, and lawful and absolute authority to grant, limit, appoint, and release, or convey all and every the premises hereby limited, appointed and released, or intended so to be, unto the use of the said *C. D.* and *E. F.* and the heirs and assigns of the said *E. F.* in manner aforesaid, and according to the true intent and meaning of these presents; and further, that it shall and may be lawful, to and for the said *C. D.* and *E. F.* and the heirs and assigns of the said *E. F.* but in trust as aforesaid, into or upon the premises, hereby limited, appointed, granted and released, or intended so to be, to enter, and the same from time to time, and at all times hereafter, peaceably and quietly to have, hold, use, occupy, possess and enjoy, and the rents, issues and profits thereof to receive and take to their own use and uses, but in

trust as aforesaid, without the lawful let, suit, trouble, denial, interruption, or disturbance whatsoever, of, from or by them the said *A. B.* and *M.* his wife, or either of them, or any person or persons whomsoever, lawfully, claiming, or to claim by, from, or under, or in trust for them or either of them, or any of the ancestors of the said *M. B.* or by, or through their or any of their wilful means, or default, consent, privity, or procurement; and that free and clear, and freely and clearly acquitted, exonerated and discharged, or otherwise by him the said *A. B.* his heirs executors or administrators, or some of them, well and sufficiently secured, kept harmless, and indemnified, of, from and against all, and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, right and title of dower, uses, trusts, wills, entails, statutes, recognizances, debts, judgments, executions, extents, rents and arrears of rent, annuities, sum and sums of money; and of, from and against all other acts, estates, titles, troubles, charges and incumbrances whatsoever, made, done, or committed by them the said *A. B.* and *M.* his wife, or either of them, or any person or persons claiming, or to claim by, from or under, or in trust for them or either of them, or any of the ancestors of the said *M. B.* And further, that they the said *A. B.* and *M.* his wife, and all and every person and persons whomsoever, having, or lawfully claiming, or who shall, or may at any time hereafter, have, or lawfully claim any estate, right, title, or interest whatsoever, of, into, or out of the premises hereby limited and appointed, granted and

REVOCATION.

released, or intended so to be, with the appurtenances or any part thereof, by, from, or under, or in trust for them, or either of them, or any of the ancestors of the said *M. B.* or by or through their, or any, or either of their wilful means or default, consent, privity, or procurement, shall and will from time to time and at all times hereafter, upon the request, and at the proper costs and charges in the law of the said *C. D.* his heirs, executors, administrators or assigns, or some of them, make, do, acknowledge, levy, suffer, and execute, or cause or procure to be made, done, acknowledged, levied, suffered, and executed, all and every such further and other lawful and reasonable act and acts, thing and things, deeds, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfect and absolute limiting, appointing, granting, and releasing, or conveying and assuring all and every the premises hereby limited, appointed, and released, or intended so to be as aforesaid, with their and every of their appurtenances unto and to the use of the said *C. D.* and *E. F.* and the heirs and assigns of the said *E. F.* in trust as aforesaid, and according to the true intent and meaning of these presents, as by the said *C. D.* his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised or advised and required; but so as that such further assurance or assurances do not contain or imply in them or any of them, any further or more extensive warranty or covenant against the party or parties, making or executing the same, or his, her, or their heirs, executors and administrators, than is or are contained in these presents. And so as that the party or parties

required to make or execute such further assurance or assurances, be not compelled or compellable for the making or doing thereof, to go or travel from his, her or their usual place, or places of abode; *And further*, that they the said *A. B.* and *M.* his wife, their heirs and assigns, or some of them, shall and will, from time to time, and at all times hereafter upon the reasonable request, and at the proper costs and charges of the said *C. D.* his heirs, executors, administrators or assigns, or any of them, produce and shew forth or cause or procure to be produced and shewn forth at any trial, hearing, or examination, in any court or courts of law or equity, or before any commissioners for the examination of witnesses duly authorized in this behalf or elsewhere, within that part of Great Britain called England, or for the perusal of his and their, or any of their counsel learned in the law, solicitors or agents, all and every the several deeds, evidences and writings mentioned and specified in the schedule *hereunder written*, (provided the same be not destroyed by fire, or other unavoidable accident) when and so often as there shall be occasion for the maintenance, manifestation, or justification of the estate, interest, right, title or possession of the said *C. D.* and *E. F.* and the heirs and assigns of the said *E. F.* of in or to the premises hereby limited, appointed, granted and released as aforesaid, or intended so to be, every or any part thereof. And lastly, it is hereby agreed and declared, by and between the parties to these presents, that the said fine or fines so as aforesaid, or in any other manner, or at any other time to be levied or acknowledged, and all and every other fine and fines, common recovery and common recoveries, deeds, con-

Covenant
to produce
deeds.

Uses of the
fine declar-
ed.

REVOCATION.

veyances and assurances in the law whatsoever at any time heretofore had, made, acknowledged, levied, suffered and executed, or at any time hereafter to be had, made, acknowledged, levied, suffered and executed, for or concerning the premises hereby limited, appointed, granted and released, or intended so to be, with the appurtenances either alone or together with other tenements and hereditaments, by and between the said parties to these presents or any of them, or by and between them or any of them, and any other person or persons whomsoever, or whereunto they or any of them are, or is, or shall, or may be a party or parties, or privy, shall be and enure, and so are or were meant, or intended to be and enure, and shall be adjudged, deemed, construed and taken to be and enure, and is and are hereby declared to be and enure as for and concerning all and every the premises hereby limited, appointed, granted, and released as aforesaid, or intended so to be, with the appurtenances, *to the only proper use and behoof* of the said *C. D.* and *E. F.* and the heirs and assigns of the said *E. F.* but nevertheless, as to the estate and interest of the said *E. F.* his heirs and assigns, *in trust* only for the said *C. D.* his heirs and assigns for ever, and to and for no other use, intent or purpose whatsoever. *In witness, &c.*

Of a SETTLEMENT.

A Settlement, according to its common acceptance, imports the conveyance and limitation of an estate, for the purpose of providing for the younger children of a marriage either already or intended to be shortly solemnized.

As it is usually made by lease or release, we shall, as far as respects the nature of the instrument, refer to the observations we formerly made on that species of conveyance ; and as the technical and legal operation of the limitations made in settlements, are intirely founded on the doctrine of *uses*, we shall in respect of those qualifications refer to that head. It *here*, therefore, only remains for us to apprize the reader of the modern mode of effecting a settlement, as far as concerns its abstract form merely—This is by conveying the estate

To the use of the grantor until the marriage takes effect—then

To the father of the expected issue for life—then

To trustees therein named to preserve contingent remainders—then

To the mother for life, in lieu of dower—then

To trustees again as before—then

To the first son of the marriage in tail with like remainders to every other son—then

To the daughters in tail, as tenants in common—with such other subsequent remainders and provisions as the nature of the estate may render proper, or the parties desire.

The effect of a limitation, thus framed, is that the estate is unalienable till the eldest son of the marriage attain the age twenty-one years. If the father be then dead, such son may, as tenant in tail, exercise a full and unlimited power over the estate—but if the father be living, he can only (of himself) bar his own issue. But if the father join, they may together cut off all subsequent limitations, and make an absolute disposition of the estate.

There is no method, therefore, of securing the estate to the *grand-children* of the settler; for if it were limited further than during a life in being, and twenty-one years afterwards, it would incroach upon the doctrine of *perpetuity*, which the law forbids. See 2 *Brow. Ch. Ca.* 30. and 2 *Term Rep.* 241. And

this settlement is binding upon the wife as well in respect of her thirds at common law, (if so expressed) as of her dower, though she be under age at the time of her marriage, 4 *Br. Par. Ca.* 570.

See more of this branch of learning, 2 *Blac. Com.* 170. *Fearne Cont. Rem. pass. Co. Lit.* 290 *b. n.* (1) *sec. iii.*

* *A Settlement of Stock.*

THIS Indenture tripartite, made, &c. between *A. B.* of, &c. Esq. of the first, *C. D.* of, &c. spinster of the second part, and *I. K. E. F.* and *G. H.* of, &c. of the third part. *Whereas* a marriage is intended to be shortly had and solemnized between the said *A. B.* and the said *C. D.* and upon the treaty for the said intended marriage, it hath been agreed that the sum of £—— consolidated three per cent bank annuities, purchased on the day of the date hereof, by the said *A. B.* with his own money, but in the names of them the said *I. K. E. F.* and *G. H.* together with the sum of £—— consolidated, three per cent. bank annuities belonging to, and standing in the name of the said *A. B.* in the books of the Bank of England kept for that purpose, should be respectively transferred to, and vested in the said *I. K. E. F.* and *G. H.* upon the

Reciting an intended marriage, and an agreement for the transfer of stock by the husband to trustees, which hath been performed.

Confidera-
tions.

Declaration
of the trusts

In trust for
the husband
until the
marriage.

trusts, and to and for the intents and purposes, and subject to the powers, provisoes, declarations, and agreements hereinafter declared, expressed and contained, of and concerning the same, and the said respective sums of £—— and £—— making together the sum of £—— have been accordingly transferred to the said *I. K. E. F.* and *G. H.* and are now standing in their names in the books of the bank of England, kept for that purpose; *Now this indenture witnesseth*, that for and in consideration of the said intended marriage, and for making a provision for the maintainance and support of the said *C. D.* during her life, in case the said intended marriage shall take effect, and she shall happen to survive the said *A. B.* and also for the issue of the said intended marriage, it is hereby declared and agreed, by and between all the said parties to these presents; and the said *I. K. E. F.* and *G. H.* by and with the consent and direction of the said *A. B.* and *C. D.* his intended wife, testified by their being parties to and executing these presents, do hereby agree and declare that they the said *I. K. E. F.* and *G. H.* and the survivors and survivor of them, and the executors, administrators and assigns of such survivor, shall and will stand and be possessed of and interested in the said principal sum of £—— consolidated three per cent. bank annuities, so transferred to them as aforesaid, and of all interest, dividends, and yearly proceeds arising, and to be produced from the same, upon the trusts, and to and for the ends, intents and purposes, and subject to, and by, with and under the several powers, provisoes, declarations and agreements hereinafter declared, expressed, and contained, of and concerning the same, that is to say, in trust

for the said *A. B.* his executors, administrators and assigns, until the said intended marriage shall be had and solemnized, *and* from and immediately after the solemnization thereof; *upon trust* that they the said *I. K. E. F.* and *G. H.* and the survivors and survivor of them, and the executors, administrators and assigns of such survivor, do and shall pay, apply and dispose of the interest, dividends, and proceeds of the said sum of £—— consolidated three per cent. bank annuities, as the same shall from time to time arise and be received to the said *A. B.* and his assigns, or otherwise do and shall permit and empower him and them to receive and take the same to his and their own use, for and during the term of his natural life, subject nevertheless to the proviso hereinafter contained for diminishing and altering the same, upon the contingencies herein after expressed, and from and immediately after his decease, do and shall pay, apply and dispose of the interest, dividends and proceeds of the said sum of £—— consolidated three per cent. bank annuities, as the same shall from time to time arise and be received to the said *C. D.* in case she shall happen to survive the said *A. B.* and her assigns, or otherwise do and shall permit and empower her and them to receive and take the same to her and their own use for and during the term of her natural life, subject nevertheless to the provisos herein after contained, for diminishing and altering the same upon the contingencies herein after expressed, and from and after the decease of the survivor of them the said *A. B.* and *C. D.* his intended wife, upon trust, that they the said *I. K. E. F.* and *G. H.* and the survivors and survivor of them, and the executors, ad-

Afterwards
to pay the
interest, &c
to him for
life.

After his
decease to
the wife for
life.

After the
decease of
the survi-
vor, to sell
the princi-
pal.

And apply
the money
to arise by
sale, and
the accru-
ing interest,
&c. until
sale,

among the
children, as
husband and
wife shall
by deed or
will appoint

ministrators and assigns of such survivor, do and shall, as soon as conveniently may be, make sale, and absolutely dispose of the said sum of £—— consolidated three per cent. bank annuities, for the best price that can be gotten for the same, and do and shall pay, apply and dispose of all and every the sum and sums of money arising therefrom, and the interest, dividends and proceeds thereof which shall accrue from the death of the survivor of them, the said *A. B.* and *C. D.* his intended wife, until such sale shall be made, unto and among all and every the child and children of the said *A. B.* on the body of the said *C. D.* his intended wife to be begotten, in such parts, shares and proportions, (in case there shall be two or more such children,) and to become a vested interest, to be paid at such time or times and in such manner, and with under and subject to such provisos, considerations and restrictions as they the said *A. B.* and *C. D.* his intended wife, shall at any time or times during their joint lives, by any deed or deeds, instrument, or instruments in writing, with or without power of revocation, sealed and delivered by them in the presence of, and attested by two or more credible witnesses, or as the survivor of them, by any deed or deeds, instrument or instruments in writing, with or without power of revocation to be by him or her sealed and delivered in the presence of the like number of witnesses, or by his or her last will and testament, or any writing purporting to be, or in the nature of, his or her last will, or any codicil or codicils thereto, to be by him or her signed, sealed, and published in the presence of the like number of witnesses, shall from time to time direct or appoint, and in default of such direc-

tion or appointment, *upon trust* that they the said *I. K. E. F. and G. H.* and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, do and shall pay, apply, and dispose of the whole of the said sum and sums of money, unto and amongst all and every such child and children, be the same a son or sons, daughter or daughters, or both, in equal parts, shares, and proportions; and if there shall be but one such child, then do and shall pay the whole to such only child for his or her own use and benefit, and the same shall be a vested interest in, and be paid to such child or children respectively at the time, and in manner following, (that is to say) the shares of such of them as shall be a son or sons to vest in and be paid to him or them at his or their age or respective ages of twenty-one years, or to be sooner employed or applied for his or their advancement or benefit as they the said *I. K. E. F. and G. H.* or the survivors or survivor of them or the executors, administrators and assigns of such survivor shall think fit, and the parts and shares of such of them as shall be a daughter or daughters, to vest in and be paid to her or them respectively at their respective age or ages of twenty-one years, or day or days of marriage which shall first happen; and if any such son or sons shall have attained his or their age or ages of twenty-one years, or any such daughter or daughters shall have attained her or their age or ages of twenty-one years, or have been married in the life-time of the said *A. B. and C. D.* his intended wife, or of the survivor of them, then the parts or shares of such son or sons, so attaining the age of twenty-one years, or so much thereof as shall not have been sooner advanced and paid, and

For want of appointment to the children equally.

And if but one child to that one.

The shares to be vested in the sons at twenty-one or sooner employed for their benefit as trustees may think fit.

And in the daughters at that age or day of marriage.

But the actual payment to be postponed until six months after the death of the surviving parents, when the same is to be paid with interest.

Provision for education and maintenance.

of such daughter or daughters attaining the age of twenty-one years, or marrying as aforesaid, shall be respectively considered as vested interests in such son or sons so attaining the age of twenty-one years, or such daughter or daughters so attaining the like age or marrying as aforesaid, but the actual payment thereof shall be postponed until six calendar months after the decease of the survivor of them the said *A. B.* and *C. D.* his intended wife, when the same shall be respectively paid to such son or sons, daughter or daughters, together with the interest or such other profit as shall arise from the same, from the decease of the survivor of them the said *A. B.* and *C. D.* his intended wife, *And upon this further trust and confidence*, that in case there shall be any such son or sons, who shall be under the age of twenty-one years, or any daughter or daughters who shall be under such age, and unmarried at the time of the decease of the survivor of them the said *A. B.* and *C. D.* his intended wife, they the said *I. K. E. F.* and *G. H.* and the survivors and survivor of them, and the executors, administrators and assigns of such survivor, in the mean time, and until the said several shares of such children shall respectively become payable, do and shall pay apply and dispose of, to and among all and every such child and children, as shall be living at the decease of the survivor of them the said *A. B.* and *C. D.* his intended wife, so much, and such part of the interest, dividends and proceeds of the said sum of £—— consolidated three per cent. bank annuities, as to them the said *I. K. E. F.* and *G. H.* or the survivors or survivor of them, or the executors, administrators and assigns of such survivor shall seem reasonable, not ex-

ceeding the interest, dividends, and proceeds of the respective parts and shares of such child and children, for and towards his her or their maintenance and education, such maintenance to be continued and paid until such time or times as his, her or their parts or shares of the said sum and sums of money shall become payable or be actually paid to him, her or them, by virtue of these presents, or any appointment to be made in pursuance thereof; *provided always*, that in case in any one year, any sum or sums of money shall be paid and applied by the said trustees in pursuance of the discretionary power herein last before given to them, for or towards the maintenance and education of any such child or children respectively which shall be less than the interest, dividends, and proceeds of the share or ^{*}respective shares of such child or children respectively, then and in such case the overplus of such interest, dividends and proceeds shall accumulate, and go in augmentation of, and be paid at the same time, or together with the original share or respective shares of such child or children respectively, yet so as nevertheless, that it shall and may be lawful to and for the said *I. K. E. F.* and *G. H.* and the survivors and survivor of them and the executors and administrators of such survivor, to pay and apply the surplus or savings of the interest, dividends, or annual proceeds of the share or shares of any such child or children respectively, in any one preceding year, for and towards, and in increase of the maintenance and education of such child or children respectively, in the next ensuing or any subsequent year. *Provided always*, and it is hereby further declared and

And accumulations.

For want
of issue as
aforesaid
upon trust
to raise
£——

And pay
the same as
the wife,
whether
covert or
sole, shall
by deed or
will ap-
point:

And for
want of ap-
pointment
to her exe-
cutors, &c.

agreed, by and between the said parties to these presents, that in case there shall be no issue of the said intended marriage, or being such, all of them shall happen to die before any one of their shares and proportions of and in the said sum of £—— consolidated three per cent. bank annuities, shall become a vested interest by virtue of these presents, *Then upon trust* that they the said *I. K. E. P.* and *G. H.* and the survivors and survivor of them, and the executors, administrators and assigns of such survivor, do, and shall after the decease of the survivor of them the said *A. B.* and *C. D.* his intended wife and such failure of issue of the said intended marriage as aforesaid, by sale, or transfer of the said sum of £—— consolidated three per cent. bank annuities, or a competent part thereof, levy and raise the sum of £—— of, &c. and pay the same to such person and persons, and for such intents and purposes, as the said *C. D.* whether sole or covert, and notwithstanding her coverture, by any deed, or writing, or by her last will and testament in writing, or any writing, purporting to be, or in the nature of such her last will and testament, or any codicil or codicils thereto to be by her respectively duly executed in the presence of two or more credible witnesses, shall direct or appoint, and in default of such direction and appointment, then as to, for and concerning the said sum of £—— of lawful money of &c. or the funds or securities upon which the same shall be placed out and invested, and the interest, dividends, and yearly produce thereof, *in trust* for the executors and administrators of the said *C. D.* to and for their own use and benefit, and subject thereto, *upon further*

trust, that they the said *I. K. E. F.* and *G. H.* and the survivors and survivor of them, and the executors, administrators and assigns of such survivor, do, and shall stand possessed of, and interested in, all and singular the residue of the said sum of £—— consolidated three per cent. bank annuities, after raising and paying the said sum of £—— as aforesaid, and the interest, dividends, and yearly produce thereof; *in trust* for the said *A. B.* his executors, administrators and assigns, and do and shall pay, apply, and transfer the same respectively, to him and them accordingly; provided always, and it is hereby declared and agreed, by and between the said parties to these presents, to be the true intent and meaning hereof, that in case the said *C. D.* shall happen to survive the said *A. B.* her intended husband, and shall intermarry with any other person, and there shall be issue between the said *A. B.* and *C. D.* his intended wife, living at the time of such second marriage, it shall and may be lawful to and for the said *I. K. E. F.* and *G. H.* and the survivors and survivor of them, and the executors, administrators and assigns of such survivor, and she, and they, is and are hereby directed, from and immediately after such second marriage being had and solemnized as aforesaid, to levy and raise by and out of the interest, dividends and proceeds of the said £—— consolidated three per cent. bank annuities, and vested in them as aforesaid, the yearly sum of £—— and pay the same unto the said *C. D.* and her assigns, for, and in lieu of the whole interest, dividends, and proceeds of the said £—— consolidated three per cent. bank annuities, herein before

And subject there-
stand pos-
sessed of the
residue for
the hus-
band.

In case the
wife sur-
vives and
marries a-
gain her life
interest to
be dimi-
nished in
favor of the
children.

SETTLEMENT.

limited, declared, agreed and provided for the said *C. D.* and her assigns for her life, as aforesaid, in case she should survive the said *A. B.* or otherwise do and shall permit or empower her and them to receive and take the same yearly sum of £—— per annum, to and for her and their own use for and during her natural life, and do and shall stand possessed of and interested in the residue and remainder of the interest, dividends, and proceeds of the said sum of £—— consolidated three per cent. bank annuities, *in trust*, and to be applied for the maintenance, education, and benefit of the child or children of the said *A. B.* and *C. D.* in such and the same manner and for such and the same purposes, and with such and the same powers and privileges of the said trustees for the time being, in the application and management thereof, as are herein before declared or contained, touching the interest, dividends, and proceeds of the said sum of £—— consolidated three per cent. bank annuities, from and after the decease of the survivor of them the said *A. B.* and *C. D.* his intended wife. *Provided also*, and it is hereby further declared and agreed, by and between the said parties to these presents, that it shall and may be lawful to and for the said *I. K. E. F.* and *G. H.* and the survivors and survivor of them, and the executors, administrators and assigns of such survivor, and such other trustee or trustees as shall be introduced into the said trust by virtue of the power hereinafter contained by and with the consent and approbation in writing of the said *A. B.* and *C. D.* his intended wife, at any time during their joint lives, or of the survivor of them at any time during the life of such survivor to make sale of and transfer the said sum of £——

Power for trustee to dispose of the stock and purchase estates there-with.

consolidated three per cent. bank annuities, or any part thereof respectively, for the current price or prices which the same may then bear, and lay out and invest the money arising by such sale or transfer from time to time, by and with such consent and approbation as aforesaid, in the purchase or purchases of messuages, lands, tenements and hereditaments in possession being of an estate of inheritance, in fee simple, free from incumbrances, and do and shall thereupon, as soon as conveniently may be after such purchase or purchases shall be made, settle convey and assure all such messuages, lands, tenements, and hereditaments, to the several uses, upon the trusts, and to and for the several intents, and purposes and subject to, with, and under the several powers, provisos, limitations and agreements hereinbefore mentioned, expressed, and declared, of and concerning the said sum of £—— consolidated three per cent. bank annuities, and the dividends, interest, and annual proceeds thereof, or as near and conformable thereto as may be, and as the death of parties and the rules of law and equity will admit; *Provided also*, and it is hereby further declared and agreed, that in the mean time and until the said sum of £—— consolidated three per cent. bank annuities, and every part thereof, shall be laid out and invested in such convenient purchase or purchases of messuages, lands, and hereditaments so to be settled as aforesaid, it shall and may be lawful to and for the said *I. K. E. F. and G. H.* and the survivors and survivor of them, and the executors, administrators and assigns of such survivor, by and with the like consent and approbation in writing of the said *A. B. and C. D.* his intended wife, at any time dur-

Such estates
to be con-
veyed to
similar uses

And lay out
the money
until a pur-
chase can
be met with
upon other
stocks, &c.
upon like
trusts.

ing their joint lives, or of the survivor of them, at any time during the life of such survivor, and afterwards at the discretion of the trustee or trustees for the time being, to sell and transfer the said sum of £—— consolidated three per cent. bank annuities, or any part thereof, for the then current price or prices, and to place out and invest the money arising by such sale or sales, in or upon any public funds, or on real or government securities at interest, and from time to time to receive the interest and purchase money from such securities, either upon voluntary payment or redemption thereof or otherwise, and with the like consent and approbation as aforesaid, during the lives of the said *A. B.* and *C. D.* his intended wife, and the life of the survivor of them, and afterwards at the discretion of the trustees and trustee for the time being, to alter, transfer, and change the funds and securities upon which the said trust monies or any part thereof, shall be invested, so often as they the said trustees or trustee for the time being shall think fit, all which new or other funds and securities, and the dividends, interest and proceeds arising therefrom, shall be subject to and upon the several trusts, and also subject to with and under the several powers, provisoes, applications, appointments, intents, and purposes herein before expressed and declared of and concerning the said sum of £—— consolidated three per cent. bank annuities, or such and so many of them as shall be then existing, undetermined and capable of taking effect, and to for or upon no other use, intent or purpose whatsoever.

Provisions
and indem-
nifications
for trustees.

Provided always, and it is hereby declared and agreed, by and between all the said parties to these presents, that it shall and may be lawful

to and for the several trustees, constituted or to be constituted by virtue of these presents, and to and for each and every of them, their and every of their heirs, executors and administrators respectively, by and out of the said trust money herein before mentioned, to deduct and reimburse to himself and themselves, and to allow to his and their co-trustees, from time to time respectively, all such costs, charges, damages and expences, as they and every or any of them shall be put unto, pay, suffer, or sustain, for or by reason of any of the trusts hereby in them reposed, or the management or execution thereof, or for or by reason of any other matter or thing in any wise relating thereto, the allowance of which costs shall be regulated by the methods practised between solicitor and client, and not as between party and party, and that none of the several trustees, their heirs, executors or administrators shall be answerable or accountable for any more money than what they shall respectively, actually, receive by virtue of the trusts aforesaid, nor shall any of them be charged or chargeable with, or accountable for the receipt and receipts of the other of them, but each for his own acts, receipts, and wilful defaults only, nor shall they or any of them be answerable, or accountable for the insufficiency or deficiency of any security or securities wherein the said sum or sums of money shall or may be invested, nor for any banker, goldsmith, agent, or any other person or persons who shall or may be employed or intrusted by them or any of them, in the management or disposition of all or any of the said sum or sums of money, nor shall they or any, or either of them be answerable or accountable for any involuntary loss of all or any of the said sum or sums

Power of
appointing
new trust-
tees.

of money, but shall be acquitted and saved harmless in respect of all such acts, matters and things as shall be done by them pursuant to these presents, in the execution or management of the several trusts hereby in them reposed, unless the same shall happen through their or his own wilful neglect or default; *Provided likewise*, and it is hereby further declared and agreed, that in case any or either of them the said *I. K. E. F.* and *G. H.* or any future trustee or trustees shall happen to die or be desirous to be discharged from, or neglect or refuse to act in the trusts hereby created at any time or times before the same trusts shall be fully performed or otherwise determined, then it shall and may be lawful to and for the said *A. B.* and *C. D.* his intended wife, during their joint lives, and for the survivors of them during his or her life, or the executors and administrators of such survivor, to nominate and appoint any other person or persons to be a trustee or trustees for the purposes aforesaid, in the place or stead of the said *I. K. E. F.* and *G. H.* or each of them, or each future trustees, or trustee, who shall happen to die or be desirous to be discharged from, or neglect or refuse to act in the trusts aforesaid, and upon such nomination and appointment, the trustee or trustees for the time being, or if all the said trustees shall be then dead, the heirs, executors and administrators of the surviving trustee, shall convey, assign, surrender and transfer the said trust estate, and all trust monies which shall be then in their names so placed out at interest as aforesaid, and the securities, stocks or funds upon which the same shall be then invested, in such effectual manner, and so as the same may be vested in the joint names of the sur-

viving or continuing trustees or trustee and of such person or persons as shall be appointed to be a trustee or trustees as aforesaid, or in case there be no such persons as shall be appointed to be trustees as aforesaid, but nevertheless upon the same trusts and to and for the same uses, intents and purposes, powers and provisos as are hereinbefore mentioned and declared, of and concerning the same, or to for and upon such of those uses, trusts, intents and purposes, powers and provisos, which shall be then subsisting, or capable of taking effect, which person or persons so to be appointed a trustee or trustees as aforesaid, shall and may from thenceforth act in the management and execution of the aforesaid trusts, or such of them as shall be then subsisting or capable of taking effect, as fully and effectually in all respects, and with the like indemnification as he or they might have done in case he or they had been originally in and by these presents appointed a trustee or trustees for the purposes aforesaid, any thing herein contained to the contrary notwithstanding. *In witness, &c.*

* *Settlement of freehold, copyhold and leasehold estates, with a covenant from the husband that his executors shall pay the wife a sum of money in case she survives him.*

T*HIS Indenture of three parts, made, &c. between A. B. of, &c. of the first part, E. F. of, &c. widow, and E. E. F. spinster, her daughter, an infant of the age of _____ years or thereabouts, of the second part, and I. K.*

Parties.

Recites an intended marriage.

And that upon the treaty for the same, the following settlement was to be made.

Consideration.

and *G. H.* both of, &c. of the third part. *Whereas* a marriage is intended to be shortly had and solemnized between the said *A. B.* and *E. E. F.* with the approbation of the said *E. F.* the mother, and natural guardian of the said *E. E. F.* testified by her being a party to, and executing these presents. *And whereas* upon the treaty for the said marriage, it hath been agreed that the said *E. F.* shall pay to the said *A. B.* as a marriage portion with her said daughter, the sum of £—— for his immediate use and disposal, and that the said *A. B.* shall forthwith make such settlement and disposition of the freehold, copyhold or customary and leasehold estates hereinafter described and intended to be hereby granted, released, assigned and covenanted to be surrendered respectively, as hereinafter particularly mentioned and contained, and shall also enter into a covenant for securing the sum of £—— to the said *E. E. F.* his intended wife, in case she shall happen to survive him, in manner hereinafter expressed. *Now this indenture witnesseth*, that in pursuance of the said agreement on the part of the said *A. B.* and in prospect and contemplation of the said intended marriage, and in consideration of the sum of £—— of, &c. by the said *E. F.* in hand well and truly paid to the said *A. B.* upon or before the sealing and delivery of these presents, the receipt whereof he the said *A. B.* doth hereby acknowledge and thereof and therefrom, and of and from every part thereof doth acquit, release and discharge the said *E. F.* her executors and administrators, and every of them by these presents. *And in order to make a suitable provision for the said E. E. F.* in case she shall happen to survive him the said *A. B.* her intended husband, by

way of jointure, and in lieu of dower, and for the issue of the said intended marriage, as well female as male, in manner hereinafter expressed; and in consideration of the sum of 10*s.* of, &c. by the said *I. K.* and *G. H.* in hand also paid to the said *A. B.* upon or before the sealing and delivery of these presents, the receipt whereof is hereby also acknowledged, he the said *A. B.* (with the privity and approbation of the said *E. F.* and *E. E. F.* her daughter, testified by their respectively being made parties to and executing these presents), *hath* granted, bargained, sold, released and confirmed, and by these presents, *doth* grant, &c. unto the said *I. K.* and *G. H.* (in their actual possession, &c. and to their heirs and assigns, *all* &c.) and all and singular houses, out-houses, edifices, buildings, barns, stables, orchards, yards, gardens, lands, meadows, pastures, feedings, commons, common of pasture, woods, underwoods, and the ground and soil thereof, ways, paths, passages, waters, watercourses, lights, easements, profits, commodities, advantages, privileges, rights, members, and appurtenances to the same premises belonging or in anywise appertaining, or to or with the same now or at any time heretofore usually had, held, occupied, or enjoyed, or accepted, reputed, deemed, taken or known as part, parcel or member thereof, or of any part thereof, and the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits thereof, and of every part and parcel thereof; and all the estate, right, title, interest, use, trust, possession, property, claim and demand whatsoever, of him the said *A. B.* of, in, to or out of the premises hereby granted and released, or intended so to be, and every or any part thereof, *To have and*

The husband with the consent of the mother and daughter, grants and conveys.

The parcels, being a freehold estate.

General words.

To hold unto trust.

tees their
heirs and
and assigns.

to hold the said messuages, barns, farms, lands, tenements, hereditaments, and all and singular other the premises herein before expressed to be hereby granted and released, with their and every of their appurtenances unto the said *I. K. and G. H.* their heirs and assigns, *to* and for the several uses, upon the trusts, for the intents and purposes, and with, under and subject to the several powers, provisoes, declarations and agreements hereinafter expressed and declared of and concerning the same, (*i. e.*) *to the use* of the said *A. B.* and his heirs, until the said intended marriage shall be had and solemnized; and from and immediately after

To the use
of the hus-
band until
marriage.

Afterwards
to the hus-
band for
life. Re-
mainder.

the solemnization of the same, *to the use* of the said *A. B.* and his assigns for and during the term of his natural life, without impeachment of or for any manner of waste, and with such power of leasing as hereinafter is contained; and from and immediately after the determination of that estate by forfeiture or otherwise, in the life-time of the said *A. B.*

To trustees
to support
contingent
remainders
Remainder

to the use of the said *I. K. and G. H.* and their heirs, during the natural life of the said *A. B.* *in trust* to support and preserve the contingent uses and estates hereinafter limited from being defeated and destroyed, *and* for that purpose to make entries, and bring actions as occasion shall require, but nevertheless to permit and suffer the said *A. B.* and his assigns from time to time to receive and take the rents, issues and profits of the said premises for and during the term of his natural life, to and for his and their own use and benefit, and from and immediately after the decease of the said *A. B.* *to the use* of the said *E. E. F.* his intended wife and her assigns during the term of her natural life, without impeachment of or

To the wife
for life.

for any manner of waste, and with such power of leasing as hereinafter mentioned, as for and in nature of a jointure for her the said *E. E. F.* and in lieu, recompence, satisfaction and bar of all such dower or thirds, at the common law, or by custom or otherwise, which she the said *E. E. F.* may or otherwise might have, claim, challenge or demand of, in or out of any manors, messuages, lands, tenements or hereditaments, which the said *A. B.* shall or may be seized or possessed of for any estate of freehold and inheritance, or other estate to which the right of dower or thirds, or other customary estate as aforesaid, may be incident or attach during the said intended coverture, and after the decease of the survivor of them the said *A. B.* and *E. E. F.* in case there shall be but one child of the said *A. B.* begotten on the body of the said *E. E. F.* to the use of such only child, and the heirs of his or her body lawfully issuing; and in case there shall be more than one such child, then as to and concerning the said barn, farm, lands and hereditaments at ———— aforesaid, with their and every of their appurtenances, to the use of all and every or any or such one or more of the children of the said *A. B.* begotten on the body of the said *E. E. F.* his intended wife, for such estate and estates, in such shares and proportions, and with such limitations over and subject to such charge or charges (the same charges and limitations, if any, being for the benefit of some other or others of the said children) and subject to such restrictions and powers of revocation and new appointment and other powers, and in such manner and form as the said *A. B.* and *E. E. F.* his intended wife, shall at any time or times during their joint lives, by any deed or deeds,

A jointure
as and in
lieu of
dower. Re-
mainder.

In case
there shall
be but one
child, to
that child
in fee,
and if there
shall be
more than
one child,
then as to
part of the
premises to
all the chil-
dren in such
shares and
for such
estates as
husband
and wife by
deed,

or as the
survivor by
deed or will
shall ap-
point.

And in de-
fault of ap-
pointment
then as to
the whole
premises to
the use of
all the chil-
dren as te-
nants in
common
with the
benefit of
survivor-
ship.

writing or writings, attested by two or more witnesses, direct, limit or appoint, and in default of such direction, limitation or appointment, and as to so much and such part and parts of the said last mentioned premises, or of the estate or interest therein, which shall not be thereby compleatly and absolutely disposed of, then as the survivor of them the said *A. B.* and *E. E. F.* his intended wife, shall at any time or times after the decease of the other of them, by any such deed or deeds, writing or writings, attested as aforesaid, or by his or her last will and testament in writing, or any writing or writings in the nature of a will, or any codicil or codicils, attested by three or more witnesses, direct, limit or appoint, give or dispose thereof in manner aforesaid, and in default of such last mentioned direction or appointment, gift, devise or disposition, *Then as to and concerning* the said barn, farm, lands and hereditaments last mentioned, or so much thereof, or of the estate and interest therein, which shall not be compleatly and absolutely disposed of in manner aforesaid; *and as to and concerning* all and singular other the messuages, farms, lands, and hereditaments herein before expressed to be hereby granted and released, from and after the decease of the survivor of them the said *A. B.* and *E. E. F.* his intended wife, in manner aforesaid, *to the use* of all the children of the said *A. B.* begotten on the body of the said *E. E. F.* as tenants in common, and of the several and respective heirs of the several and respective bodies of all such children lawfully issuing, and in case any one or more of such children shall depart this life without issue, to the use of the others or other of such child or children (as tenants in common, if more than one)

and the heirs of the body or respective bodies of such last mentioned child or children, lawfully issuing in like manner; *And* for default of all such issue *As to and concerning* the said messuage, farm, lands and hereditaments at _____ aforesaid, with the appurtenances thereunto belonging, *to the use* of the right heirs of the said *E. E. F.* *And as to and concerning* all and singular other the messuage, barn, farms, lands and hereditaments hereinbefore expressed to be hereby granted and released, with the appurtenances thereto respectively belonging, *To the use* of the right heirs of the said *A. B.* for ever, and to and for no other use, intent or purpose whatsoever. *And* the said *A. B.* doth hereby for himself, his heirs, executors and administrators covenant, promise and agree to and with the said *I. K.* and *G. H.* their heirs and assigns, that he the said *A. B.* shall and will at or before the next general or special courts baron to be holden for the manors of _____ and _____ in _____ at his own proper costs and charges, procure himself to be admitted tenant according to the custom of the said manors, to all and singular the copyhold or customary lands, tenements, and hereditaments holden of the said manors, which are part and parcel of, or have been usually held with the said farm, in _____ aforesaid, with their and every of their appurtenances, viz. to all that, &c. and shall and will immediately after such admission, surrender the same out of his hands into the hands of the lord or lords, lady or ladies of the said manors, according to the customs thereof, *To* for and upon such and the same uses, intents and purposes, and subject to the same powers of appointment, and other powers as are herein before limited and given, _____

And in default of all such issue then as to part of the premises to the right heirs of wife.

And as to residue to right heirs of the husband.

Covenant from husband to be admitted to copyhold premises.

And afterwards surrender same to such uses as the freehold premises in

are limited or are herein before intended to be given of, except the limitation to support contingent remainders over and concerning the said freehold, barn, lands and hereditaments in _____ afore-
 said, or as near thereto as the nature of the said copyhold or customary tenure, the rules of law or equity, the deaths of parties, and other circumstances will admit of, (save and except the limitation to trustees and their heirs, during the life of the said *A. B.* to support contingent remainders); And that in the mean time, and until such surrender or surrenders can be passed and perfected, he the said *A. B.* and his heirs, shall and will stand possessed of, and interested in the said copyhold, or other customary premises, with the appurtenances *in trust* for the purposes afore-
 said. *And whereas V. W.* and *L. M.* by a certain indenture bearing date, &c. for the considerations therein mentioned, *did* demise, grant and to farm let, unto *N. O.* his executors, administrators and assigns, all that free chapel of _____ in _____ and also the several tythes, &c. to be had and held from the time of the sealing and delivery of the said indenture for the term of 1000 years then to come, at and under the yearly rent of a pepper corn only. *And whereas* the said free chapel and tythes, and all and singular the premises in the said recited indenture contained, by and through several mesne conveyances, assignments and other operations in the law, and particularly by virtue of a certain indenture of assignment, bearing date, &c. now last past, expressed to be made between *A.* of the one part, and the said *A. B.* of the other part, have become legally and absolutely vested in the said *A. B.* for all the residue and remainder of the said term of 1000 years which is yet to come and unex-

And in the mean time, and until such surrenders can be passed to stand interested therein in trust for the purposes afore-
 Recital of grant of a free chapel, &c.

which is become vested in the husband.

pired. *Now this indenture further witnesseth,* Assignment of last mentioned leasehold premises. that for the considerations and purposes afore-
 said, and in further pursuance of the said agreement of the said *A. B.* in this behalf,
 and in consideration of 10s. of lawful money of Great Britain, by the said *I. K.* and *G. H.* in hand paid to the said *A. B.* upon or before the execution of these presents, the receipt whereof is hereby acknowledged, *be* the said *A. B.* hath bargained, sold, assigned, transferred and set over, and by these presents *doth* bargain, &c. unto the said *I. K.* and *G. H.* their executors and administrators, the said free chapel, barn, and tythes, and The chapel all and singular other the premises comprised in the said herein before recited indenture of, &c. with their and every of their rights, members and appurtenances; and all the estate, right, title, interest, use, trust, property, claim and demand whatsoever, at law and in equity of him the said *A. B.* of, in, to and out of the same last mentioned premises, and every part and parcel thereof, *to have and to hold* the said free chapel, barn To hold unto said trustees for the residue of the term. and tythes, and all and singular other the premises herein before expressed to be hereby assigned, with their and every of their appurtenances, unto the said *I. K.* and *G. H.* their executors, administrators and assigns, from henceforth for and during all the rest and residue of the said term of 1000 years yet unexpired, in as full, ample and beneficial a manner, to all intents and purposes whatsoever as the said *A. B.* his executors or administrators could or might have done, if this present assignment had not been executed; but nevertheless upon the several trusts, and for the several intents and purposes, and with under and subject to the several powers,

In trust for the husband until the marriage.

Afterwards in trust for the husband for life, received.

In trust for the wife for life in augmentation of her jointure.

And after the decease of the survivor if there shall be more than one child,

In trust for all the children equally to be vested and transferrable if both the parents be dead,

otherwise after the death of survivor, but to be vested from the time aforesaid, with benefit of

provisoes and agreements herein after expressed and declared of and concerning the same; *i. e. in trust* for the said *A. B.* his executors or administrators, until the said intended marriage shall be had and solemnized, and from and immediately after the solemnization thereof, *in trust* to permit the said *A. B.* and his assigns, to have, receive, and take the rents, issues and profits thereof, and of every part thereof, during the term of his natural life, and from and after his decease, *in trust* to permit and suffer the said *E. E. F.* his intended wife, in case she shall be then living, and her assigns, to have and receive the rents, issues and profits thereof, and of every part thereof, during the term of her natural life, in augmentation of the jointure herein before provided for her as aforesaid, and after the decease of the survivor of them the said *A. B.* and *E. E. F.* his intended wife, if there shall be more than one child of the said intended marriage, *in trust* for all and every the child and children of the body of the said *A. B.* by the said *E. E. F.* his intended wife, whether male or female, or both, equally to be divided between or amongst them, if more than one, as tenants in common, and not as joint tenants, and to be assigned and transferred to them respectively at their respective ages of twenty one years, if the said *A. B.* and *E. E. F.* shall be both then dead; but if they or either of them shall be then living, then immediately after the decease of the survivor, but to be vested in them from the time of their respectively attaining such ages aforesaid; and in case any one or more of the said children shall die under the age of twenty-one years without issue living at his, her or their death or deaths, *in trust* for the others

of them, and equally to be divided between survivor-
 or amongst them, if more than one, as tenants ship.
 in common, and to be assigned and transferred
 to them respectively at the respective ages or
 times aforesaid; and in case all such children
 but one shall happen to die under the age And in case
 of twenty-one years, without leaving issue there shall
 living at his, her or their death or deaths, or be only one
 in case there shall happen to be but one child child, in
 who shall attain the age of twenty-one years, trust for
 then *in trust*, to assign and transfer all the that one.
 same leasehold estates unto such surviving or
 only child at the age or time aforesaid.
Provided always, that in case any children of The issue
 the said intended marriage shall marry and of children
 die under the age of twenty-one years, leav- to be en-
 ing issue of his, her or their body or bodies titled to
 lawfully begotten, living at the time of his, their de-
 her or their death or deaths, the share or in- ceased pa-
 terest of each of them so dying of and in the rents share,
 said leasehold estates, shall go and belong to
 his or her child, or between his or her chil-
 dren, and shall not survive to the others or
 other of the children of the said *A. B.* and
E. E. F. his intended wife, in manner herein
 expressed. *And it is hereby declared*, that in with main-
 the mean time, and until the said leasehold tenance,
 estates, or the respective shares thereof as &c. and
 aforesaid, shall become and be transferrable, education,
 the said *I. K.* and *G. H.* or the survivor of
 them, or his executors or administrators shall
 stand possessed thereof *in trust*, to apply and
 dispose of the rents, issues and profits of the
 whole or such share or shares thereof as afore-
 said, for the benefit, education or maintenance
 of the child or children, grandchild or grand-
 children who shall be then presumptively en-
 titled thereto; and in case there shall be no And for
 child of the said intended marriage, or there want of
 issue in

trust for the
survivor of
husband
and wife.

Power of
leasing.

being any such, all of them shall depart this life under the age of twenty-one years, without leaving issue living at his, her or their death or respective deaths, *in trust*, to assign and transfer the said leasehold premises unto the survivor of them the said *A. B.* and *F. E. F.* his intended wife, or to the executors, administrators or assigns of such survivor, to and for his, her or their absolute use and benefit. *Provided always*, and it is hereby declared to be the true intent and meaning of these presents, and of the several parties thereto, that it shall be lawful for the said *A. B.* and *E. E. F.* his intended wife, and their assigns jointly, during their lives, and for the survivor of them, and his or her assigns separately, after the decease of the other, and after the death of both of them, for the said *I. K.* and *G. H.* or the survivor of them, or the heirs, executors or administrators of the survivor during the minority of any issue of the said intended marriage for the time being, from time to time to demise or lease, or to limit and appoint by way of demise or lease, for any term or terms of years not exceeding twenty-one years, to take effect in possession and not in reversion, or by the way of future interest, all or any part or parts of the messuages, barn, farms, lands, chapel, tythes, tenements, and hereditaments herein before expressed to be hereby granted, released, assigned, and covenanted to be surrendered respectively, with the appurtenances thereto belonging, to any person or persons whomsoever, so as there be reserved on every such demise or lease, the best and most improved yearly rent or rents that can be reasonably had or obtained, to be incident to the immediate reversion of the hereditaments to be comprised

in the same respectively, and without taking any fine or premium for granting the same, and so as there be contained in every such demise or lease, or limitation or appointment in nature of a demise or lease, a condition of re-entry on non-payment of the rent or rents to be thereby reserved, and all usual covenants for farming and managing the thereby demised premises, according to the custom of the country; *and also* so as the lessee or respective lessees be not made punishable for waste, and do execute such instruments, or counterparts of the same, and so as no lease or leases be granted of the said copyhold premises without a licence duly obtained from the lord or lords, lady or ladies of the manors aforesaid, for granting the same. *Provided further,* Power of selling and exchanging with usual directions and indemnifications. and it is hereby also declared to be the true intent and meaning of these presents, and of the several parties hereto, that it shall be lawful for the said *I. K.* and *G. H.* or the survivor of them, or the heirs, executors or administrators of the survivor, at any time or times after the solemnization of the said intended marriage (if the said *A. B.* and *E. E. F.* or the survivor of them shall request them so to do, in writing under their, his or her hands or hand, but not otherwise) to make sale, and absolutely dispose of for a fair valuable consideration in money, or to convey in exchange for or in lieu of any other messuages, lands and hereditaments, or other real estates in England of a clear and indefeasible estate of freehold in fee-simple in possession, free from incumbrances, all or any of the messuages, barns, farms, lands, chapel, tythes, tenements and hereditaments herein before by these presents granted, released, assigned, and covenanted to be surrendered respectively, with the

appurtenances thereto belonging, to or with any person or persons whomsoever; and in order to effect such sales and exchanges, it is hereby declared that it shall be lawful for the said *I. K.* and *G. H.* or the survivor of them, or the heirs, executors or administrators of the survivor, from time to time, with the consent and approbation of the said *A. B.* and *E. E. F.* his intended wife, or the survivor of them testified as aforesaid, by any deed or deeds, writing or writings, executed in the presence of two or more witnesses, to revoke, annul and make void all and singular the uses, trusts, and estates hereby or by virtue of these presents limited and created, or to be limited or created concerning the premises which shall be proposed to be conveyed away upon such sale or sales respectively (save and except, and without prejudice to such subsisting lease or leases which shall have been made of the same, by virtue of the power herein before contained) and to limit or declare any new or other use or uses of the freehold and copyhold parts thereof, and to convey and surrender the same, and also to assign and dispose of the leasehold parts thereof, so and in such manner as shall be thought necessary for the compleating and perfecting of such sales and exchanges respectively, and for conveying the same premises to and for such use or uses as the purchaser or purchasers, or person or persons, taking the same in exchange, shall direct or appoint. And it is hereby agreed and declared, that upon every such execution as aforesaid, all and singular the messuages, lands, tenements and hereditaments which shall or may be taken in exchange, shall be forthwith conveyed to the uses, upon the trusts, and subject to the powers of selling and ex-

changing, and other powers, provisoes and agreements in and by these presents limited, declared and contained concerning such of the hereditaments hereby settled which shall have been exchanged for the same, or such and so many of them as shall be then subsisting, undetermined and capable of taking effect, or as nearly agreeable thereto as the tenure of the premises so to be taken in execution, and the rules of law or equity will admit of. *And* it is further agreed and declared, that upon every such sale for a valuable consideration in money, as aforesaid, such purchase money shall be paid into the hands of the trustees or trustee of this present settlement for the time being, whose receipt alone shall be a sufficient discharge to the purchaser or purchasers thereof, and that he, she or they shall not afterwards be liable to see to the application of such purchase money. *And* it is further declared and agreed, that upon every such sale or execution as aforesaid, whenever the purchase money shall be so received, and whenever the hereditaments to be taken in exchange shall have been conveyed to the uses of this present settlement, *all* and singular the premises which shall be sold or exchanged as aforesaid, shall be held and enjoyed by the person or persons to whose use the same shall be thereupon conveyed, freed and discharged from all and singular the uses, trusts and estates hereby created, or expressed to be limited and created of and concerning the same premises respectively (*save and except* such subsisting lease and leases as aforesaid, if any such there be). *And* it is further agreed, that all and singular the monies which shall be received upon any such sale or sales as aforesaid, shall with all convenient speed be

laid out in one or more purchase or purchases of manors, messuages, lands or hereditaments in England of a clear and indefeasible estate of freehold in fee-simple in possession, free from incumbrances, and to be approved of by the said *A. B.* and *E. E. F.* his intended wife, or the survivor of them, such approbation being testified in writing under their, his or her hand or hands, in the presence of two or more witnesses, which said manors, messuages, lands or hereditaments to be purchased as aforesaid, shall be forthwith conveyed to the same uses, upon the same trusts, and subject to the same powers of selling and exchanging, and other powers, provisoes and agreements as are in and by these presents limited, declared and contained, concerning the hereditaments which shall be sold, or such and so many of them as shall be then subsisting, undetermined and capable of taking effect, or as nearly agreeable thereto as the tenure of the hereditaments so to be purchased and the rules of law and equity will admit. *And moreover*, it is agreed that until convenient and advantageous opportunities shall be found of disposing of such monies in one or more purchase or purchases as aforesaid, the same shall be laid out or invested in some or one of the public funds, or on other government or parliamentary securities, or on good real security at interest, in the name or names of the trustees or trustee of this present settlement for the time being, by and with such consent and approbation as aforesaid. *And* that it shall be lawful for such trustees or trustee by and with the same consent and approbation, or after the death of both of them the said *A. B.* and *E. E. F.* his intended wife, then of the proper authority of such trustees

or trustee for the time being, to change, alter and vary the security or securities upon which the said trust monies shall from time to time be invested for any other security or securities of the like sort or nature, when and as often as shall be thought adviseable. *And* it is hereby declared, that all and singular the dividends, interest and proceed of the several stocks, funds and securities aforesaid, shall from time to time go and be paid to or be received by the person or persons who would for the time being be entitled to the rents, issues and profits of the messuages, lands or hereditaments to be purchased with the said principal, in case the same were then actually laid out and invested in manner herein before directed. *Provided also*, that if the said *I. K.* and *G. H.* or either of them, or any future trustee or trustees to be appointed as hereinafter mentioned, shall happen to die, or be desirous to be discharged from, or shall refuse or become incapable to act in the trusts of these presents before the same shall be fully performed, then and in such case, and as often as the same shall happen, it shall be lawful for the co-trustee of the trustee so dying, desiring to be discharged, or refusing or becoming incapable to act as aforesaid, or for the heirs, executors or administrators of the surviving trustee (but nevertheless not without the consent in writing of the said *A. B.* and *E. E. F.* his intended wife, or the survivor of them, if they or either of them shall be then living) to nominate any other fit person or persons to supply the place or places of the last mentioned trustee or trustees. *And* whenever any such nomination shall be made, all the said trust, estate, monies and premises, as the case may be, shall be conveyed, assigned and

Proviso as to the appointment of new trustees.

transferred so and in such sort as the same may be compleatly and absolutely vested in such new appointed trustee or trustees solely or jointly, with a surviving or continuing trustee, as the case may be, to the uses and upon the trusts herein before expressed and declared concerning the same, or as near as may be and circumstances will admit of. *And* in order thereto so far as respects the said freehold premises thereby settled, it shall be lawful for the person or persons nominating such new trustee or trustees by any deed or deeds, writing or writings, executed in the presence of two or more witnesses, to revoke all or any of the uses thereby declared concerning the said freehold premises, and by the same or any deed or deeds, writing or writings, executed as aforesaid, to declare any other new use or uses so as to vest the same in such new appointed trustee or trustees, solely or jointly as aforesaid, for the like uses and estates, upon the like trusts, and with the like powers as are hereby vested in the trustees, parties to these presents, and every such new trustee shall and may in all things act in the trusts aforesaid, and shall have and be invested with the powers and authorities in all respects and to all intents and purposes as if he had been originally appointed in and by these presents. *And moreover* it is hereby agreed and declared between and by all the said parties to these presents, that each of them the said *I. K.* and *G. H.* and each and every of the trustees who shall or may be appointed in manner last mentioned, and each and every of their heirs, executors and administrators, shall be charged and chargeable only, and with and for such monies as he or they shall respectively actually receive by virtue of the

And usual
provisoes
and indem-
nifications
with re-
spect to
them.

trusts of these presents; and that no one of them shall be answerable or accountable for any other of them, but each of them for his own acts, receipts, neglects and defaults only, notwithstanding their respectively joining in any receipts for the purpose of conformity only, nor shall either or any of them be answerable or accountable for any person in whose hands any monies shall be deposited for safe custody, nor for any loss which shall happen by or through the insufficiency or deficiency of any fund or security in or upon which any of the said monies arising from such sale or sales as aforesaid shall be invested for the time being, unless the same shall arise or exist by or through their respective wilful defaults. *And also* that each of them the said trustees, parties hereto, and all and every such other person or persons as shall be appointed in manner aforesaid, and their respective heirs, executors and administrators, shall and may, by and out of the trust premises, or the rents, issues, profits, dividends, interest and proceed thereof, deduct and retain to himself and themselves, and shall and may allow to his or their co-trustee or co-trustees, all such costs, charges, damages and expences as they or either of them shall sustain, or be put unto in or about the execution of these presents, or any of them, or in relation thereto. *And* the said *A. B.* Covenant doth for himself, his heirs, executors and administrators, covenant and agree with the said *I. K.* and *G. H.* their executors, administrators and assigns, that in case the said intended marriage shall take effect, and the said *E. E. F.* do survive and outlive the said *A. B.* her said intended husband, the heirs, executors or administrators of him the said *A. B.* shall and

Covenant from the husband in case his wife survive him that his heirs, &c. shall pay her a sum of money.

Usual covenants in behalf of the title adopted, the different tenures of the estates settled.

will within the space of one calendar month next after his decease, well and truly pay or cause to be paid unto the said *E. E. F.* her executor, administrator or assign, the full and just sum of £—— of, &c. without any deduction, defalcation, or abatement whatsoever. *And* the said *A. B.* doth for himself, his heirs, executors and administrators, surrender, covenant and agree with the said *I. K.* and *G. H.* their heirs and assigns, by these presents, in manner following, *i. e.* that for and notwithstanding any act, deed, matter or thing by him the said *A. B.* or by any of his ancestors made, done, committed or willingly suffered to the contrary, he the said *A. B.* now is, and standeth lawfully, rightfully, and absolutely seized of the said freehold messuages, lands, tenements, hereditaments, and all and singular other the premises herein before expressed to be granted and released, with their and every of their rights, members and appurtenances, of and for a good, sure, perfect, absolute and indefeasible estate of inheritance in fee-simple in possession, and is and stands also lawfully, rightfully and absolutely possessed of and entitled to all and singular the customary or copyhold premises hereby covenanted to be surrendered, with the appurtenances thereto belonging, of and for a good, sure, and absolute estate of inheritance in possession, to him and his heirs, according to the respective customs of the said manors of ——— and is also rightfully possessed of and absolutely entitled to all and singular the leasehold chapel, tythes and premises aforesaid, with the appurtenances thereto belonging, for the residue of the aforesaid term of 1000 years, without any manner of condition, use, trust, power of revocation, limitation of use or uses, or any other restraint,

cause, matter or thing, to alter, change, charge, abridge, defeat, incumber or determine the same estates and interests, or any of them. *And* that for and notwithstanding any such act, matter or thing as aforesaid, he the said *A. B.* now hath in himself good right, full power, and absolute authority to grant, bargain, sell, release, surrender, assign, and convey the said messuages, barn, farms, lands, chapel, tythes, tenements, hereditaments, and all and singular other the premises herein before expressed to be hereby granted, released, assigned, and covenanted to be surrendered, with their and every of their appurtenances unto the said *I. K.* and *G. H.* their heirs, executors and administrators respectively, to the uses, upon the trusts, and for the intents and purposes, and subject to the powers, provisoes and agreements herein before expressed, declared and contained of and concerning the same; and that the said messuages, barn, farms, lands, chapel, tythes, tenements, hereditaments, and all and singular other the premises herein before expressed to be hereby granted and released, with their and every of their appurtenances, shall from time to time, and at all times hereafter, remain, continue and be peaceably and quietly held and enjoyed, and the rents, issues and profits thereof, and of every part and parcel thereof had, received and taken to the several uses, upon the trusts, and for the intents and purposes herein before expressed, declared and contained, of and concerning the same respectively, without any lawful let, suit, denial, eviction, molestation, disturbance, or interruption of or by the said *A. B.* or his heirs or any other person or persons lawfully claiming or to claim by, from, through, under or in trust for him or

any of his ancestors. *And* that free and clear, and freely and clearly acquitted, exonerated and discharged, or otherwise by the said *A. B.* his heirs, executors or administrators; well and sufficiently saved, defended, kept harmless and indemnified of, from and against all former and other estates, titles, troubles, charges and incumbrances already had, made, done, committed, occasioned or suffered, or to be had, made, done, committed, occasioned or suffered by the said *A. B.* or any other person or persons lawfully or equitably claiming or to claim by, from, through, under or in trust for him, or any of his ancestors. *And* moreover, that he the said *A. B.* and his heirs, and all and singular other person or persons having, or lawfully claiming, or who shall or may have or lawfully claim any estate, right, title, use, trust, or interest, at law or in equity, of, in, to or out of the said messuages, barn, farms, chapel, tythes, lands, tenements and hereditaments, herein before expressed to be hereby granted and released, or any of them, or any part of them, by, from, through, under or in trust for him the said *A. B.* or any of his ancestors, shall and will from time to time, and at all times after the solemnization of the said intended marriage, upon the request of the trustees or trustee under this present settlement for the time being, or of any other person or persons claiming under the same, but at the proper costs and charges of the said *A. B.* his heirs, executors or administrators, acknowledge, levy, suffer and execute, or cause or procure to be made, done, acknowledged, levied, suffered and executed, all and singular such further and other acts, deeds, devices, conveyances, assignments, surrenders and assurances in the law whatsoever, for the ratify-

ing and confirming of this present settlement, and for the further, better, more perfect and absolute granting, releasing, conveying, surrendering, assigning and assuring, of the said messuages, barn, farms, lands, chapel, tythes, tenements, hereditaments, and all and singular other the premises herein before expressed to be hereby granted, released, assigned and covenanted to be surrendered respectively, with their and every of their appurtenances, to the uses, upon the trusts, for the intents and purposes, and under and subject to the powers, provisos, limitations, declarations and agreements herein before expressed, declared and contained of and concerning the same, as by the trustee or trustees under this present settlement for the time being, or any other person or persons claiming or to claim any estate, right, title, or interest under the same, or any of their counsel, shall be lawfully and reasonably devised or advised and required, so as such further assurances contain in them no further or more extensive warranty or covenants than against the person or respective persons, and his, her or their heirs, executors and administrators, who shall be required to make or execute the same. *And lastly*, it is

hereby agreed and declared by and between the said several parties to these presents, that all and singular person and persons who now are, is, or hereafter shall be seized or possessed of any estate or estates, term or terms of years, or other outstanding interests, in all or any part or parts of the messuages, barn, farms, lands, chapel, tythes, tenements and hereditaments herein before expressed to be hereby granted and released, assigned and covenanted to be surrendered respectively, and his, her and their heirs, executors and admi-

Declara-
tion as to
outstanding
terms.

SETTLEMENT.

nistrators respectively, shall from time to time and at all times hereafter during the residue of such respective terms, estates and interests respectively, stand and be seized, possessed and interested thereof, and therein, *in trust*, to protect and attend the uses and trusts hereby created concerning the same premises respectively, or expressed so to be, and in order to defend the same against all mesne incumbrances, if any such there may be. *In witness, &c.*

* *Settlement after marriage wherein a term is raised to secure a jointure rent charge to the wife for life in case she survives her husband.*

Parties.

Recital of marriage.

THIS Indenture of four parts, made, &c. between *M. I.* of, &c. and *E.* his wife, late *E. B.* of, &c. spinster of the first part, *N. Q.* of, &c. and *P. Y.* of, &c. Gents. (executors in trust, and guardians specially appointed in and by the last will and testament of *R. T.* late of, &c. Gent. deceased, for the said *E. I.* during her minority) of the second part, *A. B.* and *C. D.* both of &c. Gents. of the third part, and *E. F.* and *G. H.* both of, &c. Esqrs. of the fourth part; *whereas* a marriage was on or about the — day of, &c. duly had and solemnized by and between the said *M. I.* and *E.* his wife (by and with the consent and

approbation of the said *N. Q.* and *P. Y.*) *New Consideration.*
this indenture witnesseth, that the said *M. I.* in
 pursuance and execution of certain covenants
 and agreements entered into by him, with the
 said *N. Q.* and *P. Y.* in and by a certain in-
 denture tripartite, or articles of agreement
 made previously to, and in prospect of the said
 marriage, and bearing date, &c. and made or
 mentioned to be made, between the said *M. I.*
 by his description afore said of the first part, the
 said *E. I.* by her then name and description
 of *E. B.* of &c. spinster (then a minor under
 the age of twenty-one years) of the second
 part, and the said *N. Q.* and *P. Y.* by their
 descriptions afore said of the third part, for
 making a compleat provision and maintenance
 for the said *E.* his wife for her life, in case
 she should happen to survive and outlive the
 said *M. I.* her husband, and for settling and
 assuring the manor, advowson, messuage, lands
 and hereditaments hereinafter particularly
 mentioned and described and intended to be
 hereby granted and released to such uses as are
 hereinafter limited expressed and declared of
 and concerning the same, and also for and in
 consideration of the sum of ten shillings a
 piece of, &c. to the said *M. I.* and *E.* his
 wife in hand, at or before the sealing and de-
 livery of these presents, well and truly paid by
 the said *A. B.* and *C. D.* the receipt whereof
 is hereby acknowledged, they the said *M. I.*
 and *E.* his wife (by and with the privity, con-
 sent and approbation of the said *N. Q.* and *P. Y.*
 testified by their being respectively parties to,
 and executing these presents) *have* and each of
 them *hath*, granted, bargained, sold, released
 and confirmed, and by these presents (by and
 with such privity, consent and approbation as
 afore said, testified as afore said) *do*, and each

Parcels.

To hold to
releasee.

To the use
of husband
for life.

And after
his decease
to the intent
to permit
the wife to
receive a
jointure-
rent-charge
for life.

Payable
quarterly,

of them *doth*, grant, bargain, sell, release, and confirm unto the said *A. B.* and *C. D.* (in their actual possession, &c.) and to their heirs, *all that*, &c. *To have and to hold*, capital messuage and other messuages, lands, tenements, hereditaments, and all and singular other the premises herein before mentioned to be hereby granted and released, or so intended to be, with their and every of their rights, members, and appurtenances unto the said *A. B.* and *C. D.*, and their heirs, to the several uses, upon the several trusts, and to and for the several ends, intents and purposes, and under and subject to the several powers, provisoes, declarations and agreements hereinafter limited, expressed and declared of and concerning the same, that is to say, *to the use of husband for life, remainder to A. B. and C. D. and their heirs to support contingent remainders*; and from and after his decease, *to the use, intent, and purpose* that the said *E. I.* and her assigns, in case she shall happen to survive the said *M. I.* shall and may from and immediately after the decease of the said *M. I.* have, receive, take and enjoy for and during the term of her natural life, one annual sum or yearly rent charge of £ — of lawful money of, &c. to be yearly issuing, payable and going out of all and singular the said manor, advowson, capital messuage and other messuages, lands, tenements, hereditaments and premises, and to be payable, and paid to the said *E. I.* or her assigns, by four quarterly payments, at or on the four most usual feasts or days of payment in the year, that is to say, the feast of our Lord Christ, the annunciation of the blessed virgin Mary, the nativity of St. John the Baptist, and St. Michael the Archangel in every year, by

even and equal portions, without any deduction, defalcation, or abatement, for or in any respect whatsoever; the first quarterly payment of the said annual sum or yearly rent charge of £—— to be made to the said *E. I.* or her assigns, on such of the said feasts or days of payment, as shall first and next happen, after the decease of the said *E. I.* *And* Such rent-charge to be in lieu of dower. it is hereby agreed and declared, that the said annual sum or yearly rent charge of £—— so limited to the said *E. I.* shall be taken and accepted by her, for and in the name, and in nature of a jointure, and in full recompence, bar, and satisfaction of all dower and thirds at the common law, or by custom or otherwise, which she can or may claim, have or challenge, or be any way intitled in, to, or out of all or any of the manors, messuages, lands, tenements, hereditaments and premises whereof the said *E. I.* is or may be seized of any estate of inheritance during the said coverture between them. *And* to this further use intent Power of distress. or purpose, that if it shall happen that any quarterly payment of the said annual sum or yearly rent charge of £—— or any part thereof, shall at any time or times be behind or unpaid for the space of twenty days after any of the said feasts or days of payment whereon the same ought to be paid as aforesaid, that then and from thenceforth, and so often it shall and may be lawful to and for the said *E. I.* or her assigns from time to time and at any time or times thereafter, into and upon the said manor or lordship, capital messuage or messuages, lands, tenements and hereditaments herein before mentioned, and hereby charged with the said annual sum or yearly rent charge of £—— for or by way of jointure as aforesaid, or intended so to be, and

Power of
entry.

into every or any part or parcel thereof in the name of the whole to enter and distrain, and the distress and distresses then and there found to take, lead, drive, carry away and impound, and in pound to detain and keep or otherwise to dispose of according to law, until thereby or therewith such and so much of the said annual sum or yearly rent charge of £—— as shall be so unpaid as aforesaid, and all arrears of the same (if any such shall be) and all costs, charges and expences attending such entries, and the taking such distresses or any of them as aforesaid, shall be fully satisfied and paid, to the intent that thereby the said *E. I.* shall and may be fully paid and satisfied the said annual sum or yearly rent charge of £—— as shall respectively become payable, and every part thereof, and all costs, charges, and expences attending the recovery thereof; and to this further use, intent and purpose, that in case any quarterly payment of the said annual sum or yearly rent charge of £—— or any part thereof, shall happen to be behind or unpaid by the space of twenty days after any of the said feasts or days of payment whereon the same shall become due or payable as aforesaid, that then and so often from time to time (although no formal demand shall be made of the said annual sum or yearly rent charge or the arrears thereof) it shall and may be lawful to and for the said *E. I.* and her assigns, into and upon the same manor or lordship, capital messuages and other messuages, lands, tenements, hereditaments and premises so charged therewith as aforesaid, and into or upon every or any part or parcel thereof in the name of the whole, to enter, and the rents, issues and profits thereof, to have, receive, and take to her and their own use and benefit, until she

or they shall therewith, and thereby or otherwise, be fully paid and satisfied the said annual sum or yearly rent charge of £—— and every part of the same, and all arrears thereof, and also all such arrears thereof as shall or may grow due during the time that she or they shall by virtue of such entry or entries, be in possession of the said manor and premises, together with all costs, charges, damages and expences which she or they shall sustain, lay out, expend or be put unto by or by reason of the non-payment of such annual sum or yearly rent charge as aforesaid, such possession when taken to be without impeachment of waste, and as for touching and concerning the said manor, advowson, capital messuage and other messuage, lands, tenements, hereditaments and premises so charged and chargeable with the payment of the said annual sum or yearly rent charge of £—— the remedies for recovery thereof hereinbefore mentioned, from and immediately after the decease of the said *M. I.* to the use of the said *E. F.* and *G. H.* their executor, administrators and assigns for the term of one hundred years, to be computed from the death of the said *M. I.* and from thence next ensuing, and fully to be complete and ended without impeachment of waste, upon the several trusts nevertheless, and for the several intents and purposes hereinafter expressed and declared of and concerning the same term; and from and immediately after the expiration or other sooner determination of the said term of one hundred years, and in the mean time subject thereto, and to the trusts thereof, (*Here insert such limitations as may meet the object of the parties,*) And as for and concerning the said term of one hundred years hereinbefore limited in use to the said *E. F.*

Trusts of the term declared. viz. to secure the due payment of the rent-charge.

And in case
the same be
in arrear,

To pay the
same out of
the rents
and profit or
sale, or a
mortgage of
the term.

Or by
bringing ac-
tions ag-ainst
the tenants,
&c.

and *G. H.* their executors, administrators and assigns as aforesaid, it is hereby agreed and declared, by and between all the said parties to these presents, that the said term of one hundred years is so limited to them upon the several trusts, and for the several intents and purposes herein after expressed and declared concerning the same, (that is to say) *In trust* for the further and better securing to the said *E. I.* and her assigns during her life in case she shall survive the said *M. I.* the due payment from time to time of the said annual sum or yearly rent charge of £—— hereinbefore limited to her, in the nature of a jointure, clear of all taxes, charges, deductions and impositions as aforesaid, when the said annual sum or yearly rent charge shall become due or payable, and for that purpose in case the said annual sum or yearly rent charge of £—— or any part thereof, shall at any time or times be behind or unpaid by the space of twenty days next after any of the said feasts or days of payment, whereon the same is hereby reserved or made payable as before is mentioned concerning the same, then and so often (although no formal demand shall have been made of the said annual sum or yearly rent charge of £—— as shall so become payable as aforesaid, or of the arrears thereof) it shall and may be lawful to and for the said *E. F.* and *G. H.* or the survivor of them, and the executors, administrators and assigns of such survivor from time to time, by and out of the rents, issues and profits of the said manor or lordship, advowson, capital messuage and other messuages, lands, tenements, hereditaments, and premises comprized in the said term of one hundred years, or by demise, mortgage, or sale of a compe-

tent part thereof, for all or any part of the said term, or by bringing actions against any of the tenants or occupiers of the said premises for the recovery of the rents thereof, then, in arrear, or by making entries upon the same premises or any part thereof, or by all or any of the said ways or means, or by any other ways or means whatsoever, as to them the said trustees for the time being shall seem meet to levy, raise, and pay all arrears of the said annual sum or yearly rent charge of £—— hereinbefore limited as aforesaid, to the said *E. I.* for her jointure as aforesaid, as shall from time to time be due and unpaid to her the said *E. I.* or her assigns, together with all such damages, costs, charges, and expences, as she the said *E. I.* her executors, administrators or assigns, or they the said *E. F.* and *G. H.* or the survivor of them, or the executors, administrators, or assigns, of either of them shall expend, sustain, or be put unto by reason of the non-payment of such annual sum or yearly rent charge of £—— or otherwise, in the execution of the trusts hereinbefore declared of and concerning the said term of one hundred years, and the premises therein comprized. *And upon this further trust*, that they the said *E. F.* and *G. H.* and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall permit and suffer the person or persons, who for the time being shall be next intitled to the reversion or remainder of the premises immediately expectant on the said term of one hundred years, to receive and take the residue and overplus of the rents, issues, and profits of the premises comprized in the same term, over and above what will be sufficient to pay and satisfy the said annual sum or yearly rent

And apply any overplus of money to be raised for the persons intitled in remainder.

Proviso of
cesser.

charge of £—— as shall become payable as
aforesaid ; and all costs, charges, damages
and expences attending the execution of
the aforesaid trusts, to and for his and their
own use and benefit. *Provided* always, that
when and so often as all the trusts hereinbefore
declared and expressed of and concerning the
said term of one hundred years, shall be fully
performed and satisfied, or shall be discharged
either by becoming unnecessary, or incapable
of being performed, or by any other means,
and when full payment shall be made of all
such costs, charges, and expences as they the
said E. F. and G. H. or either of them, their
or either of their executors, administrators or
assigns or any of them, shall sustain, bear,
expend, or be put unto, in or about the ex-
ecution of the several trusts hereinbefore
mentioned, of and concerning the said term
of one hundred years, then and from thence-
forth, the said term of one hundred years of
and in the said manor and premises herein
comprized, or of or in so much or such part
or parts thereof as shall remain undisposed of,
in or about the execution of the said trusts,
shall cease, determine and be utterly void,
any thing herein before contained to the con-
trary thereof in any wise notwithstanding,
(Here add the usual powers of indemnification, &c.)
In witness, &c.

* *Settlement upon a separation of husband and wife, of freehold, copyhold, and leasehold estates, goods, chattels, South-Sea annuities &c.*

THIS Indenture tripartite, made, &c. *be- Parties,*
tween A. B. of, &c. of the first part,
C. B. wife of the said A. B. of the second part
and E. F. of, &c. Esq. of the third part, Agreement
whereas the said A. B. and C. his wife have for separa-
mutually consented and agreed, and are de- tion.
termined to live separate, and part from each
other for the future during their joint lives, That hus-
And whereas, the said A. B. is seized in his band is seiz-
demesne, as of fee, of and in the lands, here- ed of free-
ditaments and premises hereinafter particularly hold here-
mentioned and intended to be hereby granted ditaments.
and released, And the said A. B. is also seized And also of
to him and his heirs according to the custom customary
of the manor of ——— of and in the custo- heredita-
mary lands, hereditaments, and premises ments.
herein after described and covenanted to be Also to
surrendered, and the said A. B. is also pos- leasehold
essed of, and intituled unto certain leasehold premises.
lands, hereditaments, and premises herein- And is pos-
after particularly mentioned, and intended to sessed of, or
be hereby assigned, and is likewise possessed of intituled to
or intituled unto sundry goods, chattels and sundry
effects, and to several sums of money secured goods and
to him, by mortgages and other securities chattels.
hereinafter particularly mentioned, and is also And to
possessed of the sum of £—— South-Sea mortgages,
annuities. And whereas, upon the treaty for and South-
the said separation, it was stipulated and agreed Sea annui-
that the said freehold, copyhold, leasehold and ties.
agreed shall Which it is
agreed shall

be settled as follows.

That the South-Sea annuities have been assigned accordingly

Consideration.

Release.

General words.

To hold.

personal estate and effects should be granted, surrendered and assigned unto the said *E. F.* his heirs, executors, administrators and assigns, upon the trusts, and to and for the ends, intents and purposes hereinafter respectively declared, of and concerning the same. *And whereas* the said *A. B.* hath in pursuance and in part performance of the said agreement transferred or caused to be transferred unto the said *E. F.* the said sum of £—— South-Sea annuities, and the same now stands in his name, upon the trusts hereinafter expressed and declared, *Now this indenture witnesseth*, that in pursuance and part performance of the said agreement, and for and in consideration of the sum of 10s. of, &c. to the said *A. B.* well and truly paid by the said *E. F.* at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; *he* the said *A. B.* hath granted, bargained, sold, aliened, released, ratified and confirmed, and by these presents *doth* grant, bargain, sell, alien, release, ratify and confirm unto the said *E. F.* in his actual possession, &c. *All, &c. (freehold premises)* together with all houses, outhouses, edifices, buildings, barns, stables, yards, gardens, orchards, ways, paths, passages, waters, water-courses, rights, privileges, commodities, advantages and appurtenances whatsoever, to the said lands, hereditaments, and premises belonging, or in any wise appertaining. And the reversion and reversions, remainder and remainders, rents, issues, and profits, of all and singular the same premises, and all the estate, right, title, inheritance, property, possession, claim and demand whatsoever, of him the said *A. B.* of, in, or to the same, every or any part thereof, *to have and to hold*,

the said lands, hereditaments, and premises hereby granted and released, or expressed, or intended so to be, with their and every of their appurtenances unto the said *E. F.* his heirs and assigns, to the several uses, upon the several trusts, and to and for the ends, intents and purposes, and subject to the powers, declarations, and agreements, hereinafter expressed and declared, of and concerning the same, that is to say, to the use of the said *A. B.* and his assigns, for and during his natural life, without impeachment of, or for any manner of waste, and with such power of leasing as hereinafter is contained, and from and immediately after the decease of the said *A. B.* to the use of the said *C.* wife of the said *A. B.* and her assigns, for and during her natural life, without impeachment of or for any manner of waste, and with such powers of leasing, as is hereinafter expressed, and from and after the several deceases of the said *A. B.* and *C.* his wife, and of the survivor of them, to the use of ——— and ——— children of the said *A. B.* on the body of the said *C.* his wife begotten, and their heirs, equally to be divided between them, share and share alike, and they to take as tenants in common, and not as joint tenants, and to and for no other use, intent or purpose whatsoever. *Provided* always, and it is hereby declared and agreed, by and between the said parties to these presents, that it shall and may be lawful to and for the said *A. B.* from time to time, for and during the term of his natural life, and after his decease, to and for the said *C.* during her natural life, by indenture or indentures, duly executed under his or her hand and seal respectively, to demise,

To the use
of the hus-
band for
life.

Remainder
to the wife
for life.

Power of
leasing.

Covenant
to surrender
the copy-
hold pre-
mises.

lease, or grant all, or any part, or parts of the said lands, hereditaments and premises hereinbefore granted and released unto any person or persons, for any term or number of years, not exceeding twenty-one years, to take effect in possession and not in reversion, so as there be reserved in every such lease, demise, or grant respectively, the best and most improved yearly rent that can be reasonably had or gotten for the same, without taking any fine, premium, or foregift for the making thereof, and so as there be contained in such demises or leases respectively, conditions for re-entry on non-payment of the rent, to be thereby reserved, and so as such demises, leases, or grants, are so penned as that there be not contained any clause or clauses whereby any power or authority shall be given to any lessee whatsoever, to commit waste, or whereby any lessee shall be exempted from punishment for committing of waste, and so as the respective lessees do severally execute counterparts of their respective leases; *And this indenture further witnesseth*, that in pursuance, and further part performance of the said agreement, and for and in consideration of ten shillings of like lawful money of, &c. to the said *A. B.* well and truly paid by the said *E. F.* at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; *he* the said *A. B.* doth for himself his heirs, executors and administrators, covenant, promise, grant and agree to and with the said *E. F.* and his heirs, that he the said *A. B.* shall and will within the space of _____ calendar months next ensuing the date of these presents, at his and their own costs and charges, by surrender in the court, to be held

for the manor of _____ in the county of _____ according to the custom of the same manor, or by other lawful ways or means surrender, settle and assure all that, &c. *(copyhold premises)*, and all the estate, right, title, interest, property, claim and demand whatsoever, of him the said *A. B.* of, in, or to the same, or any part or parcel thereof, to the use of the said *E. F.* and his heirs, to be held of the lord of the said manor, according to the custom thereof, by the rents and services thereof, due and accustomed, and shall and will at the like costs and charges of him the said *A. B.* or his heirs, cause or procure the said *E. F.* to be duly admitted tenant thereof accordingly; but upon the trusts, and to and for the intents and purposes, and subject to the powers, declarations and agreements hereinafter declared and expressed, of and concerning the same. *And this indenture further witnesseth*, that in pursuance, and further part performance of the said agreement, and for and in consideration of ten shillings of, &c. to the said *A. B.* well and truly paid by the said *E. F.* at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, *he* the said *A. B.* hath granted, bargained, sold, assigned, transferred and set over, and by these presents doth grant, bargain, sell, assign, transfer, and set over unto the said *E. F.* *All that, &c. (leasehold premises,)* and all the estate, right, title, interest, term and number of years therein now to come and unexpired property, claim and demand whatsoever, of him the said *A. B.* of, in, to, or out of the same and every part or parcel thereof. *To have and to hold*, the said messuage, lands, hereditaments and premises hereby assigned or intended so to be, with their

Copyhold premises.

General words.

To the use of trustee.

And to procure his admittance thereto.

Upon trusts after mentioned.

Assignment of the leasehold premises.

To hold.

and every of their appurtenances unto the said *E. F.* his executors, administrators and assigns, for and during all the rest and residue of the said term of ——— years therein now to come and unexpired, upon the trusts nevertheless, and to and for the intents and purposes hereinafter expressed and declared of and concerning the same. *And this indenture further witnesseth*, that in pursuance, and further part performance of the said agreement, and for and in consideration of ten shillings of, &c. to the said *A. B.* well and truly paid by the said *E. F.* at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged) *be* the said *A. B.* hath granted bargained, sold, assigned, transferred, and set over, and by these presents, *doth* grant, bargain, sell, assign, transfer, and set over unto the said *E. F.* his executors, administrators, and assigns, all and every the crops of corn, live and dead stock, cattle, household goods and furniture, debt, sum and sums of money belonging to, and now due, and owing him the said *A. B.* as are in the schedule hereunto annexed, particularly mentioned and set forth, and all the right, title, interest, possession, benefit, advantage, profit, property, claim and demand whatsoever, of him the said *A. B.* of in and to the said hereby assigned premises, and every part and parcel thereof, *To have, hold, receive, take and enjoy* the said stock in trade, household goods, debts, sum and sums of money, and all and singular other the premises hereby assigned, or mentioned or intended so to be, to and for the only use and behoof of the said *E. F.* his executors, administrators and assigns, as and for his and their own money, goods, chattels, and effects, from henceforth for ever upon the trusts, and to and

Upon trusts
declared.

Assignment

of corn,
cattle,
household
furniture,
money, &c.

General
words.

To hold.

Upon trust
after men-
tioned.

for the ends, intents and purposes hereinafter expressed and declared, of and concerning the same. And for the better and more effectually enabling the said *E. F.* to recover and receive the said hereby assigned debts, and monies, *he* the said *A. B.* hath made, ordained, constituted and appointed, and by these presents *doth* make, ordain, constitute and appoint the said *E. F.* his executors and administrators, his true and lawful attorney, in the name of him the said *A. B.* to ask, demand, sue for, levy, recover, and receive of and from all and every the person or persons who ought, or may become liable to pay the same, all and every the debts, sum and sums of money, goods, chattels; personal estate and effects, hereby assigned or mentioned or intended so to be, and in case of non-payment, or non-delivery thereof, or of any part thereof, to compound for the same, or submit any differences to arbitration, or commence, or bring one or more action or actions, or commence or carry on, or answer and defend any suit or suits in law or equity for recovery thereof, or concerning the same, and upon receipt thereof, or any part or parcel thereof, to give sufficient releases or discharges for the same, and generally to act and do in and about the premises as fully, amply, and effectually to all intents and purposes as he the said *A. B.* might, or could lawfully do if these presents had not been made, and the said *A. B.* doth hereby ratify and confirm, and agree to ratify and confirm all and whatsoever his said attorney shall lawfully do, or cause to be done, in or about the premises agreeable to the true intent and meaning of

Usual
power of
attorney.

The trusts
of the copy-
holds, lease-
holds, and
chattels, de-
clared to be.

to sell the
copyholds,

and lease-
hold,

and place
the money
arising
therefrom
in the funds
or upon se-
curities at
interest,
and stand
possessed
thereof, and
the goods,
stocks, &c.

these presents. *And* it is hereby declared, by and between the said parties to these presents, that the covenant so entered into, for making such surrender of the said copyhold premises, and the assignment of the leasehold premises, and of the goods, chattels and effects, sum and sums of money, so due and owing as aforesaid, and the transfer of the said South-Sea annuities, to, or to the use of the said *E. F.* his heirs, executors, administrators and assigns, according to the nature of the said several estates and property, was and were so entered into and respectively made as aforesaid, upon trust, and to the intent and purpose that the said *E. F.* his heirs, executors, and administrators, shall and do, with all convenient speed, make sale and dispose of and surrender the said copyhold premises, so covenanted to be surrendered as aforesaid, unto any person or persons, and his or their heirs, and also of the said leasehold premises, and the goods, chattels, securities and effects hereby assigned respectively, either together or in parcels, and by private contract, or by public auction, for the best price or prices that can be had or got for the same respectively, and do, and shall place out the money arising by such sale or sales, in the public stocks or funds, or on government or real security at interest, in the name of the said *E. F.* his executors or administrators, and do and shall stand possessed of, or interested in the said money so arising, and to be produced by such sale or sales of the said copyhold and leasehold premises, and the goods, chattels, securities and effects, and of the stocks, funds and securities so to be purchased with the money arising from such sale or

sales respectively, and also of the said £ — South-Sea annuities, to be transferred as afore-
 said, upon the trusts, and to the intents and purposes, and subject to the powers, de-
 clarations and agreements hereinafter ex-
 pressed and declared of and concerning the
 same (that is to say,) *upon trust* that the said
 E. F. his executors and administrators, do,
 and shall by and out of the interest, dividends
 and profits of the money arising from the sale
 of such copyhold and leasehold premises, and
 the goods, chattels, securities and effects, and
 from the stocks, funds and securities to be
 purchased therewith as afore said, and from
 the said £ — South-Sea annuities, pay
 unto the said A. B. and his assigns, the sum
 of — a week, for and during his natural
 life, and do, and shall pay the residue and
 remainder of the interest, dividends and pro-
 fits of the money arising from such sale or sales
 as afore said, and the stocks, funds, and se-
 curities to be purchased therewith, and from
 the South-Sea annuities so transferred as
 afore said, unto the said C. B. and her assigns
 for and during the joint lives of the said A.
 and C. B. and from and after the decease of
 the said A. B. in case he should happen to die
 in the life time of the said C. B. *Then upon*
trust that the said E. F. his executors and ad-
 ministrators, do and shall pay the whole of
 the interest, dividends and profits of the
 money arising from such sale or sales as afore-
 said, and the stocks, funds, and securities to
 be purchased therewith, and from the South-
 Sea annuities, so transferred as afore said, to
 the said C. B. and her assigns for and during
 her natural life; but if the said C. B. shall

(viz.) out of
 the produce
 thereof to
 pay a week-
 ly sum to
 the husband
 for life,

and the re-
 sidue there-
 of to the
 wife during
 their joint
 lives.

And after
 his death
 in case he
 should die
 first,

to pay the
 whole of the
 produce to
 the wife for
 life.

But if the ~~should die~~ ~~first~~ ~~then to pay~~ ~~the same,~~ ~~happen to die in the life-time of the said A. B.~~ ~~then upon further trust that he the said E. F.~~ ~~his executors and administrators, do, and~~ ~~shall, from and after such the decease of the~~ ~~said C. B. in the life time of the said A. B. pay~~ ~~the residue and remainder of the interest, di-~~ ~~vidends and profits of the money arising from~~ ~~such sale or sales as aforesaid, and the stocks,~~ ~~funds, and securities to be purchased there-~~ ~~with, and from the said £ ——— South-Sea~~ ~~annuities, from and after the payment of the~~ ~~said sum of ——— a week, to the said A. B.~~ ~~as aforesaid, unto the said ——— and ———~~ ~~share and share alike, for and during the life~~ ~~of said A. B. and from and after the decease~~ ~~of the survivor of them the said A. B. and~~ ~~C. B. then upon further trust that he the said~~ ~~E. F. his executors and administrators, do~~ ~~and shall stand possessed of, and interested in~~ ~~the several sums of money which shall arise~~ ~~and be produced from the said estates and~~ ~~property hereby made saleable as aforesaid,~~ ~~and of the several stocks, funds and securities~~ ~~which shall, or may have been purchased~~ ~~therewith, and also of the said £ ———~~ ~~South-Sea annuities, and of all interest, divi-~~ ~~dends and proceeds to arise or grow due~~ ~~from the same and every part thereof respec-~~ ~~tively; in trust for the said ——— and ———~~ ~~in equal shares, and their executors and ad-~~ ~~ministrators, and do and shall pay, assign,~~ ~~transfer and deliver the same to him, her or~~ ~~them accordingly, and to and for no other~~ ~~trust, interest or purpose whatsoever. And~~ ~~the said A. B. for himself, his heirs, execu-~~ ~~tors and administrators, doth covenant, pro-~~ ~~mise and agree to and with the said E. F. his~~ ~~heirs, executors, administrators and assigns~~

subject to
 fush week-
 ly payment
 to the said
 children
 during his
 life.
 And after
 the decease
 of the sur-
 vivors
 to stand pos-
 sessed of the
 principal,
 &c. in trust
 for the
 children in
 equal shares
 Husband
 covenants
 with trust-
 tee

by these presents; that he the said *A. B.* shall and will at all times hereafter permit the said *C. B.* to live separate and apart from him, and to reside wherever, and with whomsoever she shall from time to time think fit, without being molested, interrupted, or disturbed in any respect whatsoever, by the said *A. B.* or by any other person or persons whomsoever, by or through his act, means, privity, consent, or procurement; and that he the said *A. B.* shall not at any time or times hereafter sue her the said *C. B.* in the ecclesiastical court, for or on account of her living separate and apart from him; And also, that he the said *A. B.* shall not, nor will at any time hereafter molest, interrupt or disturb either by force, threats or by commencing any action or suit, or in any other respect whatsoever, any person or persons who may hitherto have harboured or received, or who shall or may at any time hereafter during the joint lives of the said *A. B.* and *C. B.* harbour or receive the said *C. B.* And in consideration of the said grant and release, covenant, assignment and transfer hereinbefore contained or mentioned on the part of the said *A. B.* He the said *E. F.* doth hereby for himself, his heirs, executors, administrators and assigns, covenant, promise and agree, to and with the said *A. B.* his heirs, executors and administrators, by these presents in manner following, (that is to say,) that he the said *E. F.* his executors and administrators, shall and will well and truly pay, or cause to be paid unto the said *C. B.* her executors, administrators and assigns, during the life of the said *A. B.* the weekly sum of _____ of lawful money of, &c. to commence from the date of these presents, the first payment thereof to be made at the end

to permit
his wife to
live apart
from him
without
molestation

or suit in
the ecclesi-
astical court

And that he
will not
molest nor
sue any
person for
harbouring
her.

Trustee
covenants
with hus-
band to pay
the weekly
allowance.

of seven days next ensuing the date hereof, and to continue to be paid weekly. *And further*, that the said *C. B.* or any other person or persons, by her procurement, shall not nor will at any time or times during the joint lives of her and the said *A. B.* in any wise interrupt or disturb the said *A. B.* in his place of abode, or dwelling, or elsewhere, or in his manner or way of living, either by way of ecclesiastical process or otherwise howsoever; *and also*, that the the said *C. B.* shall not, nor will at any time hereafter, exhibit, or prefer in any spiritual or ecclesiastical court, any libel or process for conjugal rights or dower or commence, sue forth, or prosecute any writ, process, suit, or action, for compelling the said *A. B.* to cohabit with her at any time hereafter, or to pay or allow her while they shall live separate and apart as aforesaid, any alimony money, pin money, sum or sums of money, provision or provisions whatsoever, either for her cloathing, necessaries, maintenance, or support, or otherwise howsoever, save and except the provision hereinbefore secured in manner aforesaid; *and also*, that the said *C. B.* shall not, nor will at any time hereafter, attempt, or endeavour to cohabit again with him the said *A. B.* without the full and free consent of him the said *A. B.* signified in writing, under his hand, and to be subscribed by him in the presence of two or more credible witnesses. *And also*, that he the said *E. F.* his heirs, executors, and administrators, shall and will, from time to time, and at all times hereafter during the joint lives and separation of the said *A. B.* and *C.* his wife, well and sufficiently defend, keep harmless and indemnified the said *A. B.* his heirs, executors and administrators, and her and

their, and every of their lands, tenements, and hereditaments, goods, chattels, and all his and their real and personal estate and effects, of from and against all sum and sums of money, costs, charges, damages and expenses whatsoever, which the said *A. B.* his heirs, executors, or administrators, shall or may be obliged to pay, or shall suffer, sustain, or be put unto, for, upon account, or by reason or means of any such debt or debts, contracted by her the said *C. B.* within the time, or upon the account aforementioned, or which at any time or times hereafter, during such separation as aforesaid, shall be contracted by her the said *C. B.* and which the said *A. B.* would otherwise, or shall or may be, or become liable, or obliged to pay for or on account of any board, lodging, goods, wares, apparel or other things whatsoever, which shall or may at any time during the joint lives and separation of them the said *A. B.* and *C.* his wife, be found provided or taken up for, on account, or by the procurement of the said *C. B.* and also of, from, and against all claims and demands of the said *C. B.* on the said *A. B.* in his life time, for or on account of alimony, or separate maintenance, or from his, or their heirs, executors or administrators, or from or out of his or their lands, tenements, goods, and chattels respectively, after his decease, either for or in satisfaction of her dower or thirds at common law, by virtue of the statute made for distribution of intestates effects, or otherwise howsoever, or for, or on account of any bargain, or other indenture or thing whatsoever, to be had, made, done, or committed by the said *C. B.* or on her account, for or by reason or means of any action or actions, suit or suits, prosecution or prosecu-

Penalties.

tions, costs, damages or expences which shall or may be brought, commenced, prosecuted or carried on against, or actually sustained by the said *A. B.* for or in respect of any of the matters or things aforesaid. *Provided always*, and it is hereby declared and agreed, that in case the said *A. B.* and *C.* his wife, shall at any time hereafter, during their joint lives, voluntarily, and mutually consent and agree (such consent on the part of the said *A. B.* to be testified in writing as aforesaid) to cohabit and shall accordingly cohabit and live together, then and in that case, these presents, and every matter, cause and thing herein contained, shall from thenceforth cease and be void and of no effect (any thing hereinbefore contained to the contrary thereof, in any wise notwithstanding). *And* for the due performance of the agreements herein contained on the part of the said *A. B.* he the said *A. B.* doth hereby bind himself, his heirs, executors and administrators unto the said *E. F.* his executors, administrators and assigns, in the penal sum of £ — of lawful money of, &c. *And* for the due performance of the said agreements hereinbefore contained on the part of the said *C. B.* he the said *E. F.* doth hereby bind himself, his executors, administrators and assigns, unto the said *A. B.* his executors, administrators and assigns, in the like penal sum of £ — of, &c. *In witness, &c.*

Of SEVERANCE.

Sec PARTITION.

**The mode of severing a jointenancy in freehold and leasehold estates.*

THIS Indenture, made, &c. between E. C. of, &c. spinster, (one of the surviving devisees in fee of the lands and hereditaments, and also one of the surviving executrixes and residuary legatees mentioned in the last wills and testaments of S. C. and F. C. late of, &c. spinsters, her deceased sisters,) of the one part, and G. H. of, &c. of the other part. *Whereas* the said S. C. duly made and executed her last will and testament in writing, in the presence of and attested by three witnesses, in the manner prescribed by law for passing of real estates by devise, bearing date, &c. and thereby after making some pecuniary dispositions, gave, devised and bequeathed all the remainder of her lands, goods, chattels, real and personal estate whatsoever and wheresoever, unto her three sisters, F. C. the said E. C. and G. C. their heirs, executors, administrators and assigns for ever, and of her said will, appointed her said three sisters executrixes, devisees and residuary legatees, and afterwards, to wit, in or about the month of, &c. died without altering or revoking the same. *And whereas* the said F. C. also duly made her last will and testament in writing, in the presence of, &c. bearing date, &c. and thereby after giving and making some pecuniary dispositions, gave, devised and bequeathed all the rest,

Recital of
the will
creating the
jointenancy
&c.

Recital of
the will of
one of the
devisees
whereby
she gave her
share to the
others.

Confidera-
tion.

Grant and
release by
one moiety
of the free-
hold premi-
ses.

Habendum.

refidue and remainder of her goods, chat-
tels, lands, real and personal estate and effects
whatsoever, unto her said sisters, their heirs,
executors, administrators and assigns for ever,
and of her said will appointed them sole
executrixes, and some time afterwards, to
wit, in or about the month of, &c. died
without altering or revoking the same. *Now*
this indenture witnesseth, that for and in con-
sideration of the sum of 10*s.* of, &c. to her
the said *E. C.* in hand paid by the said *G. H.*
upon or immediately before the execution of
these presents, the receipt of which is hereby
acknowledged, the said *E. C.* hath granted,
bargained, sold, released and confirmed, and
by these presents *doth* grant, &c. unto the said
G. H. (in his actual possession, &c.) and
to his heirs, and assigns, one undivided
moiety or half part, the whole into two equal
parts to be divided of and in all the freehold
messuages, lands, parts or shares, heredita-
ments, and real estates, given and devised in
and by the said several wills of the said *S. C.*
and *F. C.* respectively herein before men-
tioned and recited, with their and every of
their rights, members, and appurtenances, and
the reversion and reversions, remainder and re-
mainders, suits and services of all and singular
the said premises; and all the legal and
equitable estate, right, title, interest, use, trust,
benefit, property, claim and demand whatso-
ever, of her the said *E. C.* of, in, to, out of or
upon the same premises respectively, *To have*
and to hold the said undivided moiety or half
part of all and singular the said freehold mes-
suages, lands, parts and shares, hereditaments,
and real estates so given and devised in and
by the said recited wills of the said *S. C.* and
F. C. respectively as aforesaid, and hereby

mentioned and intended to be hereby granted and released, and the rights, members, and appurtenances thereto belonging, unto the said *G. H.* and his heirs, *to the use of* the said *E. C.* and of her heirs and assigns for ever, ^{To the use of a trustee.} *To the intent* that the joint tenancy of and in the said real estate created in and by the said *E. C.* and her sister *G. C.* may be effectually severed, and to and for no other use, intent or purpose whatsoever. *And this indenture also witnesseth,* that for and in consideration of the sum of 5*s.* of like lawful money, to her the said *E. C.* in hand paid by the said *G. H.* at the time of the execution of these presents, the receipt, &c. she the said *E. C.* hath bargained, sold, assigned, transferred, and set over, and by these presents ^{Assignment.} doth bargain, &c. unto the said *G. H.* his executors, administrators and assigns, one undivided moiety or half part, the whole into two equal parts to be divided, of and in all and singular the goods, chattels, leasehold estates for years, and parts and shares of leasehold estates for years, and other personal estates given and bequeathed in and by the said several wills of the said *S. C.* and *F. C.* hereinbefore mentioned and recited, and all the legal and equitable estate, right, title, interest, term and terms of years, and residue of term and terms for years, property, claim and demand whatsoever of her the said *E. C.* of, in, to, or out of or upon the same respectively, *To have and to hold* the said undivided moiety or half ^{To hold to trustee for the residue of the term therein.} part of all and singular the said goods, chattels, leasehold estates for years, and other personal estates for years, and parts or shares of leasehold estates for years, and other personal estates so given and bequeathed in and by the

SEVERANCE.

In order to
a severance
thereof.

faid recited wills of the faid S. C. and F. C. respectively as aforefaid, or hereby mentioned and intended to be hereby assigned unto the faid G. H. his executors, administrators and assigns, for all the estate, term and interest bequeathed by the faid will in the same premises whereof a moiety is hereby assigned, but nevertheless in trust for her the faid E. C. her executors, administrators and assigns, *To the intent* that the joint tenancy of and in the same premises created in and by the faid wills, and survived to her the faid E. C. and her faid sister, G. C. may be effectually severed, and upon no other trust, and for no other intent or purpose whatsoever. *In witness, &c.*

OF SURRENDERS.

A Surrender is the yielding up an estate for life or years, to him who has the immediate remainder or reversion. *Co. Lit. 337. b.*

A surrender must, like other deeds, be in writing, but no particular words are essential to be used; for as a lease, according to the definition formerly given, is only a contract between the lessor and lessee, any words the import of which is such as to shew the intention of the parties to dissolve that contract, are sufficient to work a surrender. *Cro. Jac. 169. 1 Wils. 27.* Two things however are ma-

terial to the validity of a surrender, 1st. that the surrenderer be in possession of the thing intended to be surrendered, and 2d. that the surrenderee have a greater estate than the surrenderer; because in a surrender it is necessary that the less estate be merged and drowned in the greater. *Co. Lit.* 337.

And therefore it is usual in practice in order to guard against the want of either of those essentials, to make the surrender the subject of a lease and release.

** Surrender of an estate by deed poll.*

TO all to whom these presents shall come, A recital
the Rev. J. S. of, &c. D.D. sends greeting, that father
Whereas the said J. S. holdeth for the term of holdeth for
his natural life as tenant, by the curtesy of life as te-
England, one undivided moiety of the capital nant by the
messuages, cottages, closes, lands, and tene- curtesy,
ments hereinafter particularly mentioned, with the
the immediate reversion or remainder there- immediate
of in fee-simple or fee-tail, now being remainder
in J. S. his son, to his son in
these presents therefore fee.
witness, that in consideration of the natu- Confidera-
ral love and affection which the said J. S. tion.
hath and beareth for the said J. S. his son,
and for his preferment and advancement in
the world, and to the intent and purpose that
the said J. S. may have the absolute power to
sell, dispose of, or settle the said moiety of
all and singular the premises as he may think

fit and proper; and for and in consideration of the sum of 5 s. of lawful money of Great Britain, to the said J. S. paid by the said J. S. the receipt of which he doth hereby confess and acknowledge, he the said J. S. hath granted, surrendered and yielded up, and by these presents doth grant, surrender and yield up unto the said J. S. and his heirs, *all*, &c. together with all ways, passages, lights, easements, woods, underwoods, hedges, ditches, waters, watercourses, profits, commodities, hereditaments, emoluments and appurtenances whatsoever, to the said capital messuages, hereditaments and premises belonging or in any wise appertaining. *To have and to hold* the said undivided moiety of and in the said capital messuages, cottages, lands, tenements, hereditaments, and premises hereby granted and surrendered, or expressed or intended so to be, with their and every of their appurtenances unto the said J. S. his heirs and assigns, *to the use* of the said J. S. his heirs and assigns, to the intent and purpose that the estate for life of the said J. S. may be absolutely extinguished and merged in the inheritance of the premises now being in the said J. S. the son. *In witness, &c.*

Surrender.

Parcels, &c.

Habendum
to remain-
der in fee.

To the in-
tent that the
same may
merge in
his inhe-
ritance.

* *Surrender by lease and release from a tenant for life by the curtesy, to a person intitled to the inheritance.*

Parties. **THIS** Indenture, made, &c. between G. C. of, &c. of the one part, and F. D. of the same place, esq. of the other part. *Whereas* the said G. C. is seized of and intitled to the lands and hereditaments hereinafter by these pre-

A recital
that the first
party is in-
titled to the

sents granted and released; or intended so to be, with the appurtenances thereto belonging, for and during the term of his natural life as tenant by the curtesy of England, and the said *F. D.* is seized and intitled to the remainder or reversion in fee simple, expectant upon, and to take effect in possession from and immediately after the decease of the said *G. C.* of and in the said lands, hereditaments and premises; and whereas the said *F. D.* hath contracted and agreed with the said *G. C.* for the absolute purchase of his said estate and interest of and in the said lands, hereditaments, and premises at or for the price or sum of £——. *Now this indenture witnesseth, that* for and in consideration of the sum of £—— of, &c. to the said *G. C.* in hand well and truly paid by the said *F. D.* at or before the sealing and delivery of these presents, the receipt of which the said *G. C.* doth hereby confess and acknowledge and thereof and of and from every part thereof doth acquit, exonerate, release, and for ever discharge the said *F. D.* his heirs, executors, administrators and assigns, by these presents, the said *G. C.* hath granted, bargained, sold, aliened, released and confirmed, and by these presents doth grant, bargain, sell, alien, release and confirm unto the said *F. D.* (in his actual possession, &c.) and to his heirs, all, &c. and also all other the lands and hereditaments situate in —— aforesaid, of which the said *G. C.* is tenant by the curtesy, and to the remainder or reversion whereof the said *F. D.* is intitled as hereinafter mentioned, together with all ways, waters, watercourses, paths, passages, walls, lights, easements, commodities, emoluments, hereditaments, rights, members, and appurtenances whatsoever to the said pre-

premises
for life with
remainder
to the se-
cond party
in fee.

That the
ormer has
agreed to
sell his
estate to the
latter.

Considera-
tion.

Grant and
release.

Bargain and
sale men-
tioned.

General
words.

mises belonging or in any wise appertaining,
 and the reversion and reversions, remainder
 and remainders, yearly and other rents, issues
 and profits, of all and singular the same pre-
 mises; and all the estate, right, title, interest,
 freehold inheritance, use, trust, property,
 claim and demand whatsoever, both at law
 and in equity of him the said G. C. of, in, to,
 from, upon, or out of the said lands and here-
 ditaments hereby granted and released, or in-
 tended so to be, and every part or parcel
 thereof, *To have and to hold* the said several
 closes, pieces and parcels of land hereby
 granted and released, or intended so to be,
 and every part and parcel thereof respectively,
 with their and every of their appurtenances,
 unto the said F. D. his heirs and assigns, dur-
 ing the term of the natural life of the said
 G. C. to the intent that the estate and interest
 of the said G. C. may merge and be extinguish-
 ed in the reversion and inheritance of the
 said premises now vested in the said F. D.
(Covenant from C. that he has not incumbered.)
 In witness, &c.

Habendum
 in fee to the
 second
 party.

During the
 natural life
 of the first.

To the in-
 tent that
 the same
 may merge
 in the re-
 version of
 the latter.

Of U S E S.

THE history and learning of the doctrine
 of uses, would occupy too large a field
 for the limits of a preliminary discourse of the
 nature of those prefixed to the different spe-
 cies of instruments contained in the present

sheets. For these therefore we must refer to those who have written expressly on that subject. See also *Co. Lit.* 271. *b. n.* (§) 2 *Blac. Com.* 327. and 2 *Fonb. Eq. c.* 1.

The object immediately before us is the nature of such deeds as are designed for the purpose of leading or declaring the uses of other instruments, previously made; and these are principally fines and recoveries which, if no use be declared of them, will in general be ineffectual, and enure to the use of him only by whom they were levied or suffered, and though by means of a *consideration* they be made to carry the estate to the cognizee or recoverer, yet as from the nature of these assurances, it will be so carried absolutely, and without restriction or qualification, they are incapable alone of answering the purposes of family arrangements; wherefore made subject to the direction of other deeds, in which their end and use can be more conveniently expressed. Those deeds if made prior to the fine or recovery, are said to *lead* the uses, and if subsequent to *declare* them. See 2 *Blac. Com.* 362.

The validity of deeds, for the purpose of *declaring* the uses of fines, &c. was for some time doubted, on the construction given to

the statute of frauds, but by 4 and 5 Anne, c. 16. this doubt is now however removed, and those species of deeds declared to be "good and effectual in the law."

This declaration of the uses of a fine, &c. may be made even by a feme covert, for it is not an independent deed of itself, but refers to, and takes its validity from the fine, 1 Lord Raym. 289. the like may be said in respect of infants who cannot avoid the deed of declaration whilst the fine or recovery continues in force, *ib.* and 5 Co. 26.^b

**Introduction to the uses of a fine wherein a feme covert joins.*

THIS Indenture, made, &c. between D. E. and F. his wife of the one part, and G. H. of, &c. of the other part, *Witnesseth* that for the settling conveying and assuring the messuages, lands, tenements, hereditaments and premises herein after mentioned and described to and for the several uses, estates, intents and purposes hereinafter expressed and declared, and for and in consideration of the sum of five shillings apiece of lawful money of, &c. to to the said D. E. and F. his wife, in hand paid by the said G. H. at or before the execution of these presents, the receipt whereof is hereby acknowledged, he the said D. E.

Consideration.
Covenant.

for himself and the said F. his wife, his and

her heirs, doth covenant, promise, and grant, and she the said *F.* doth consent and agree, to and with the said *G. H.* and his heirs by these presents, that they the said *D. E.* and *F.* his wife, shall and will at the costs and charges in the law of the said *D. E.* his executors, &c. before the end of next Michalmas term, or some other subsequent term, acknowledge and levy in due form of law, before his majesty's justices of the court of common pleas at Westminster, unto the said *G. H.* and his heirs, one or more fine or fines, *sur conuzance de droit come ceo*, &c. with proclamations to be thereupon had according to the form of the statute in that case made and provided, and the usual course of fines in *Parcels.* such cases used and accustomed of, *all*, &c. &c. ways, waters, watercourses, easements, profits, privileges, liberties, commodities, advantages, emoluments, hereditaments and appurtenances whatsoever, to the said messuages, lands, tenements, hereditaments and premisses herein before mentioned, and every of them belonging, or in any wise appertaining, or therewith, or with any part or parcel thereof usually held, used, occupied or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member thereof, and the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits of all and singular the said premisses, and of all the estate, right, title, interest, inheritance, use, trust, property, claim and demand whatsoever, both at law and in equity of them the said *D. E.* and *F.* his wife, of, in, to, or out of the same premisses, every or any part or parcel thereof, by such apt and fit names, descriptions, quantities and qualities of land and other particulars, and in

The uses.

such manner and form as shall be advised and thought fit for that purpose; *And* it is hereby declared and agreed, by and between the said parties to these presents, that as well the said fine or fines, so as aforesaid, or in any other manner, or at any other time levied, or to be levied of the said messuages, lands, tenements, hereditaments and premisses, or any of them, or whereunto they, or any of them are, or shall be parties or privies, shall be and enure, and shall be adjudged, deemed, construed and taken, and so are and were meant and intended to be and enure, and the conusee or conusees in the said fine or fines named or to be named, and his or their heirs shall stand and be seised of the same messuages, lands, tenements, hereditaments and premisses, with their and every of their appurtenances, to the use and behoof of the said *G. H.* his heirs and assigns for ever, and to and for no other use intent or purpose whatsoever. *In witness, &c.*

**Introduction to the uses of a recovery by fine.*

THIS Indenture, made, &c. between *E. M.* of, &c. of the first part, *N. O.* of, &c. of the second part. *C. D.* of, &c. of the third part, and *I. F.* of, &c. of the fourth part, *Witnesseth*, that for barring, docking, destroying, defeating, and extinguishing the estates tail of them the said *L. M.* *N. O.* and each or either of them, and all remainders, limitations, reversions, estates, charges, conditions and contingencies thereupon respec.

tively expectant, or depending of and in the lands and other hereditaments hereinafter mentioned and intended to be hereby bargained and sold, and in consideration of the sum of £—— a piece of, &c. to the said *L. M.* and *N. O.* paid by the said *C. D.* at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, they the said *L. M.* and *N. O.* have and each of them hath granted, bargained, sold, and confirmed, and by these presents do, and each of them doth grant, bargain, sell and confirm unto the said *C. D.* and his heirs; *All, &c. (parcels with general words,)* To have and to hold the said lands, hereditaments, and all and singular other the premises hereby bargained and sold or expressed and intended so to be, with their and every of their rights, members and appurtenances unto the said *C. D.* and his heirs, to the end, intent and purpose, that the said *C. D.* may be and become perfect tenant of the freehold of the lands and other hereditaments hereby bargained and sold or expressed and intended so to be, with their appurtenances, in order that one or more common recovery or common recoveries may be had and suffered of the said lands and other hereditaments against the said *C. D.* in Michaelmas term next, in such manner as hereinafter is expressed, And for the more effectual barring and destroying all estates tail which are now subsisting or in being in the said lands and other hereditaments, and for the more effectually conveying, assuring, and confirming the said lands, hereditaments and premises unto the said *C. D.* his heirs and assigns; they the said *L. M.* and *N. O.* do for themselves their heirs and assigns, covenant, promise and agree with and

to the said *C. D.* his heirs and assigns, that they the said *L. M.* and *N. O.* shall and will at the costs and charges of the said *L. M.* as of Trinity term last, Michaelmas term next, or some other subsequent term, acknowledge and levy before the justices of his Majesty's Court of Common Pleas, at Westminster, unto the said *C. D.* and his heirs, one or more fine or fines, *sur conuzance de droit, come ceo, &c.* whereupon proclamation shall be made according to the form of the statute in that case made and provided of the lands hereditaments, and premises hereinbefore mentioned to be hereby bargained and sold, with their appurtenances, by such names, quantities, qualities and descriptions as shall be sufficient to ascertain and comprize the same; *And* it is hereby agreed and declared, by and between the said parties to these presents, that the fines so as aforesaid, or in any other manner, or at any other time, to be had, acknowledged, and levied, and the whole force, effect and operation thereof, shall be and enure, and shall be adjudged, deemed, construed and taken to be and enure *To the use* of the said *C. D.* and his heirs, *To the intent*, to strengthen the estate hereinbefore bargained and sold or conveyed to him; *To the end* that he may become and be perfect tenant of the freehold of all the said lands, hereditaments and premises, with their appurtenances, in order that such common recovery may be had, suffered, and executed thereof as aforesaid, *And for that purpose* it is hereby covenanted and agreed by and between the said parties to these presents, that it shall and may be lawful to and for the said *I. F.* as of next Michaelmas term, or any subsequent term, at the costs and charges of the said *L. M.* to sue forth and prosecute out of his

Majesty's High Court of Chancery, one or more writ or writs of entry, *sur disseizin en le post*, returnable and to be returned before his Majesty's justices of the Court of Common Pleas at Westminster, against the said *C. D.* thereby demanding the said lands, hereditaments and premises hereby bargained and sold, or expressed and intended so to be, with their appurtenances, by such descriptions as will effectually ascertain and comprize the same, and that to the said writ or writs, the said *C. D.* shall appear gratis in his own proper person, or by his attorney lawfully authorized, and shall vouch to warrant the said premises, the said *L. M.* and *N. O.* and that the said *L. M.* and *N. O.* shall thereupon appear in their own proper persons, or by their attorneys lawfully authorized in their behalf, and enter into the warranty, and vouch over to warrant the common vouchee of the said Court of Common Pleas, and that the said vouchee of the said Court of Common Pleas shall thereupon appear and imparle, and depart in contempt of the Court, so that judgment shall and may be thereupon had and given for the said *I. F.* to recover the said lands, hereditaments and premises against the said *C. D.* and for the said *C. D.* to recover in value against the said *L. M.* and *N. O.* and for the said *L. M.* and *N. O.* to recover in value against the vouchee aforesaid, and that execution shall and may be thereupon awarded and had accordingly, and that all other things shall and may be done, and executed, which shall be needful and requisite for the suffering and perfecting of such common recovery and recoveries as aforesaid; And it is hereby agreed and declared, that immediately from and after the perfecting thereof, the common recovery

and fine so as aforesaid, or in any other manner or at any other time to be had, levied, and suffered, and all other common recoveries, fines, conveyances and assurances in the law whatsoever, had made, levied, suffered, or executed, or hereafter to be had, of the said lands, hereditaments and premises, hereby bargained and sold, or expressed and intended to be, or any of them, or any part thereof, either alone or jointly, with any other hereditaments by or between the said parties to these presents, or any of them, or whereunto they or any of them are, is, or shall be parties, or a party, privies or a privy, and the whole force, effect, and operation thereof, shall be and enure, and shall be adjudged, deemed, construed, and taken to be and enure, *to the only proper use and behoof* of the said R. B. his heirs and assigns forever, and to and for no other use, intent or purpose whatsoever. *In witness, &c.*

OF WILLS.

THE last species of instrument by which property may be transferred from one man to another is a *will* or a *testament*. The first of which is usually applied to the devise of *real*, and the latter to the bequest of *personal* estates.

Formerly great restriction was laid upon the power of devising, but now by the statutes 32 Hen. 8. c. 1. and 29 Car. 2. c. 24. "all persons (except bodies politic) having a sole estate or interest in any lands or hereditaments, shall have full liberty to give and dispose of the same by will in writing."

But by 34 Hen. 8. c. 5. *femes covert*s, minors, idiots, and persons of non-sane memory are (agreeably to the rules of the common law) excepted out of the preceding statutes; a feme covert may, however, by the assent of her husband, dispose of her *personal* effects by will; and this power is therefore frequently expressly given her by the settlement made on her marriage. But an instrument executed by virtue of such a power, though in the nature of a will, is not strictly speaking such, but rather an *appointment* referring back to the deed of settlement by which it was created. *Pow. Dev.* 168. and see 2 *Vern.* 104. *Prec. Chan.* 44. 3 *Brow. Ch. Ca.* 8.

But besides this description of persons which are excepted out of the stat. 34 Hen. 8. there are many others, which, from reasons of policy, or the arbitrary rules of the common law, are incapable of making a valid will, these are persons under duress, traitors, felons,

felo-de-fes, outlaws, aliens and joint-tenants.
See 1 *Blac. Com.* 372. 2 *Ib.* 499. 4 *Ib.* 386.

And as there are some persons incapable of making a will, so there are some things incapable of being devised; these are principally those which in the statutes of wills (32 *Hen.* 8. explained by 34 of the same reign) are not comprized under the phrase of "estates of inheritance," as titles of dignity, offices, and corodies, franchises, goods of the church, estates in expectancy, estates turned to a right, commons without stint, the property of corporations and copyhold estates. It is to be observed, however, that this last species of estate, though not strictly deviseable, is indirectly made subject to the directions of a will by previously *surrendering* it to the use of such will. See *Pow. Dev. pass.* 2 *Blac. Com.* 373. *Fonb. Eq.* 315.

- * *Part of a will containing a general bequest of personal estate to executors, with the usual powers of settling, compounding debts, &c.*

THIS is the last will and testament of me *C. D.* of, &c. whereby I give and bequeath unto *E. F.* and *G. H.* both of, &c. esqrs. whom I appoint executors of this my will, all my ready money, and all such sums of money as shall be due and owing to me at the time of my decease upon mortgages or by specialty or simple contract, and all and singular other my personal estate and effects whatsoever and wheresoever not hereinafter by me otherwise disposed of, *upon trust* that they the said *E. F.* and *G. H.* or the survivor of them, or the executors, administrators or assigns of such survivor, do and shall, with all convenient speed after my decease, call in and compel payment of all such part of my personal estate as shall consist of money due and owing upon securities or otherwise, and do and shall sell and dispose of and convert into money such part or parts thereof as shall not consist of money. And my mind and will is, that it shall and may be lawful to and for the said *E. F.* and *G. H.* and the survivor of them, and the executors, administrators and assigns of such survivor, to compromise or compound any sum or sums of money owing to me at the time of my decease, and to adjust, settle, and compromise all accounts which at the time of my decease shall be depending between me and any other person or persons whomsoever, and to give or allow such reasonable time or indulgence for the payment of the same respectively, and in the mean time to accept and take

such securities or assurances, for the payment thereof as they or he shall in their or his discretion think fit; and my will and mind is, that the said *E. F.* and *G. H.* and the survivor of them, and the executors, administrators and assigns of such survivor, do and shall by, with and out of the money to arise by the ways and means last herein before mentioned, satisfy and discharge all such debts as shall be due and owing by me to any person or persons whomsoever by specialty, simple contract, or otherwise howsoever at the time of my decease, and the interest of such of the said debts as shall carry interest, and with full power to admit such evidence of any such debt or debts as to him or them shall seem sufficient; and in the next place do and shall satisfy and discharge the several legacies and bequests of this my will, or which I shall or may give or bequeath by any codicil or codicils thereto, or by any testamentary writing or writings under my hand or signed by me, and whether witnessed or not.

* *Bequest of a sum of money to trustees to be invested in the stocks, or put out at interest, the dividends, &c. are to be at the separate disposal of a feme covert during her life, and on her death the principal to go over to her children.*

I Give and bequeath the sum of £—— of lawful money of Great Britain, to the said *D. E.* and *F. G.* their executors administrators and assigns, upon and for the trusts, intents and purposes, and with, under, and subject to the powers, provisos, and declarations hereinafter expressed of or concerning the same, (that is to say), *upon trust* that they

the said *D. E.* and *F. G.* and the survivor of them, and the executors, administrators and assigns of such survivor do and shall lay out and invest the same in their or his names or name, in the purchase of parliamentary stocks or funds of Great Britain, or at interest upon real securities in his majesty's dominions in Europe or America; and do and shall from time to time, alter and vary the same at their or his discretion, and do and shall during the life of my daughter *K.* the wife of _____ pay the interest, dividends and annual produce thereof, to such persons, for such intents and purposes, and in such manner as my said daughter *K.* by any writing or writings signed by her with her own hand shall, whether covert or sole, as the same shall from time to time become due and payable, but not by way of anticipation, direct or appoint, or for want of such direction or appointment into her own hands, for her own sole, separate and peculiar use and benefit, and exclusively of and without being anywise subject or liable to the debts, intermeddling or controul of her present or any future husband; and I declare it to be my will that the receipts in writing of my said daughter, or of the person or persons to whom she shall direct the said interest, dividends and annual produce to be paid, shall, notwithstanding her coverture, be a good and sufficient discharge, and good and sufficient discharges for the said interest, dividends, and annual produce, or so much thereof as in such receipts respectively shall be expressed or mentioned to be received; and from and after her decease *upon trust* that they the said *D. E.* and *F. G.* and the survivor of them, or the executors, administrators or assigns of such survivor, do and shall pay, transfer and assign the said sum of £—— and the stocks, funds

and securities in or upon which the same or any part thereof shall be invested or laid out, and the interest, dividends and annual produce thereof, to, between or among all and every or such one or more, exclusively of the other or others, of the child or children of my said daughter, either by her present or any future husband, or unto all and every, or such one or more of the lawful issue, born in the lifetime of the said K. of any of the said children, or both, unto such one or more of the said children, and such one or more of their or any of their issue, born in the lifetime of the said K. at such age or ages, from fourteen inclusive to twenty-one inclusive, in such manner, and if more than one, in such shares and proportions as my said daughter, by any deed or deeds, or instrument or instruments in writing to be sealed and delivered by her in the presence of and attested by two or more credible witnesses, or by her last will and testament, or by any codicil or codicils thereto, to be signed and published by her in the presence of, and attested by the like number of witnesses, shall notwithstanding her present or any future coverture, direct and appoint, and for want of such direction and appointment, do and shall pay, transfer and assign the said trust monies, stocks, funds and securities, and the interest, dividends and annual produce thereof, to, between or among all and every the children or child of my said daughter K. who being a son or sons, shall attain the age of twenty-one years, or depart this life under that age leaving issue living at the time of his or their decease or respective deceases, or born in due time after, or being a daughter or daughters, shall attain that age, or marry, to be divided between or among such children, if more than one, in equal shares and propor-

tions ; and if but one child, the whole of the said trust monies, stocks, funds and securities to such one child, and if there shall be no child of my said daughter K. who being a son, shall attain the age of twenty-one years, or depart this life under that age, leaving issue of his body living at the time of his decease, or born in due time after, or being a daughter, shall attain that age, or marry, then the said trust money, stocks, funds and securities to be considered as part of the surplus or residue of my personal estate, and be disposed of accordingly.

* *Bequest of a leasehold estate, with the furniture, stock, &c. also a devise of plantations, negroes, &c.*

I Give and bequeath unto my said son D. E. all that messuage or mansion house which I now occupy at ——— in the county of ——— and the garden, grounds, lands, out-houses, edifices, and buildings thereto belonging, with the appurtenances, *To have and to hold* the said messuage or mansion house, and other the premises last herein before mentioned to be hereby given, and every of them, and every part thereof, unto my said son D. E. his executors, administrators and assigns, for and during all the residue and remainder which at the time of my decease shall be to come and unexpired of the term or terms of years by which I now hold the same, or for which I shall hold the same at the time of my decease ; I also give and bequeath unto the said D. E. for his own proper and absolute use and benefit, all the furniture, glasses, china, table-linen, implements

of husbandry and household, provisions, live and dead stock and other articles and things whatsoever, (except money or securities for monies,) which shall be in or upon the said messuage or mansion-house, or the outhouses, edifices, buildings, or the gardens, grounds, or lands thereunto belonging. And I give, devise and bequeath unto my said son *D. E.* his heirs, executors and administrators, all and singular my messuages, plantations, lands, and other hereditaments at ——— and the negroes, live and dead stock, and other articles and things thereunto belonging at the time of my decease, *To hold* the same unto the said *D. E.* his heirs, executors, administrators and assigns, for his and their proper use and benefit, according to the nature and quality of the said last mentioned premises respectively.

** Part of a will whereby the testator gives a sum of money to be invested in stock for the purposes therein mentioned, and bequeaths the residue of his personal estate to be laid out in the purchase of lands, &c.*

I Give and bequeath unto *T. T.* and *N. W.* their executors, administrators and assigns, the sum of £—— of, &c. upon the trusts and to and for the intents and purposes hereinafter expressed and declared of and concerning the same (that is to say) *upon trust*, that they the said *T. T.* and *N. W.* and the survivor of them, his executors, administrators and assigns, do and shall lay out and invest the same in parliamentary stocks or public funds,

or on real or government securities at interest, and from time to time alter, change and vary the securities as he or they shall think fit, and do and shall from time to time pay the interest, dividends, and produce of the said sum of £—— or of the stocks, funds, or securities in which the same shall be invested to the said J. B. and his assigns, or otherwise permit and suffer, and fully authorize and impower him and them to receive and take the same, until the time of his decease, or of a commission of bankruptcy issuing against him, whichever shall first happen; And from and after the decease of the said J. B. or a commission of bankruptcy issuing against him, *Upon this further trust*, that they the said T. T. and N. W. or the survivor of them, his executors, administrators and assigns, shall and do pay, transfer and set over the said principal sum of £—— and all interest, dividends and produce thereupon due or to become due, and the security or securities in which the same shall be then invested, unto and amongst all and every the child and children of the said J. B. equally to be divided between or amongst them if more than one; and if but one, then the whole to such one, and to belong to and be an interest vested in such child or children, being a son or sons, at his or their age or respective ages of twenty-one years, or being a daughter or daughters, at her or their age or respective ages of twenty one years, or day or respective days of marriage which shall first happen; and to be paid, transferred and assigned at such ages, days or times, to such child and children respectively, not attaining the said ages days or times till after the decease of the said J. B. or after a commission of bankruptcy issued against him; but

the share or shares of such child or children attaining the said ages, days or times before the decease of the said *J. B.* or before a commission of bankruptcy (if any) issued against him, to be paid and payable, and to be transferred to him, her or them respectively, immediately after the decease of the said *J. B.* or a commission of bankruptcy issued against him, whichever shall first happen, with the interest, dividends or produce thereupon due or to become due, from and after the times of such decease or commission of bankruptcy, whichever shall first happen. *And upon further trust,* that they the said *T. T.* and *N. W.* and the survivor of them, or the executors, administrators and assigns of such survivor shall, and do in the mean time, and after the decease of the said *J. B.* or a commission of bankruptcy issued against him, whichever shall first happen, pay, apply, and dispose of the clear yearly interest, dividends and produce of the share of every such child whose share shall not then be vested or payable as and when the same shall from time to time become due and be received for the maintenance and education of such child respectively, until his or her respective share or shares shall become vested or payable, if he, she or they shall so long live. *Provided* always, and it is my will, and I do hereby direct that if any such child shall depart this life before the share hereby intended or provided for him or her shall become vested, then the share or shares, as well original as accruing by virtue of this present clause or proviso, hereby intended and provided for every such child so dying, shall from time to time go, accrue and belong unto the survivors or survivor, and others or other of the said children, and shall be equally divided

between or amongst them, if more than one, but if but one, the whole to that one, and to become vested and be paid and payable to him, her or them, at such ages or days and times, and in the same manner as is or are hereinbefore directed, provided and declared concerning his, her or their original shares respectively.

(Here declare how or to whom the £ — is to go in the event of J. B. not having issue to become intitled thereto.) And I give and bequeath all the rest and residue of my monies, securities for money, stocks, funds, personal estate, and effects whatsoever, not herein before by me otherwise given and disposed of, unto A. K. and W. C. their executors, administrators and assigns, upon trust and confidence that they the said A. K. and W. C. their executors or administrators do and shall as soon as conveniently may be after my decease, and a convenient purchase or purchases be found, lay out and invest the same in the purchase of freehold lands or hereditaments, to be situate in that part of Great Britain called England, of a clear indefeasible estate of inheritance in fee-simple, to be conveyed and assured to the use of the trustees or trustee so purchasing the same, their or his heirs and assigns for ever, upon the trusts for the intents and purposes, and under and subject to the provisos and declarations hereinafter by me expressed or declared concerning the same (that is to say) *In trust* for the first son of the body of my son K. B. lawfully issuing, and the heirs of the body of such first son; and in default of such issue *in trust* for the second, third, fourth, fifth, sixth, and all and every other son and sons of the body of the said K. B. lawfully issuing, severally and successively, and in remainder one after another, in order and course as they respectively

shall be in priority of birth, and the severall and respective heirs of the body and bodies of all and every such son and sons, the elder of such sons and the heirs of his body being always preferred, and to take before the younger of such sons and the heirs of his and their body and bodies; and in default of such issue *in trust* for all and every the daughter and daughters of the body of my said son K. B. lawfully issuing, equally to be divided between or amongst them if more than one, share and share alike as tenants in common and not as joint tenants, and the severall and respective heirs of the body and bodies of all and every such daughter and daughters; and if there shall be but one such daughter then *in trust* for such only daughter, and the heirs of her body, and in case there shall be more than one such daughter, and there shall be a failure of lawful issue of the body or bodies of any such daughter or daughters, then as to the original part and share or parts and shares of any such daughter or daughters, whose issue shall so fail, as well as to such other part and share, or parts and shares as by virtue of this present clause shall have become vested in, or have accrued unto, any such the same daughter or daughters, or her or their issue upon the failure of issue of any other or others of the said daughters, *in trust* for the remaining and other or others of the said daughters, to be equally divided between or among them, if more than one, share and share alike as tenants in common and not as joint tenants, and the severall and respective heirs of the body and bodies of such remaining and other daughters, and if there shall be but one such remaining and other daughter; then *in trust* for that daughter and the heirs

of her body; (*with remainder to the children of several other sons of testator, with remainder to the children of several of his daughters.*) And in default of such issue then *in trust* for every future son and sons of me the said K. B. (*the testator*) severally, successively and in remainder one after another in order and course as they shall respectively be in priority of birth, and the several and respective heirs of the body and bodies of all and every such future son and sons, the elder of such son and sons and the heirs of his body being always preferred, and to take before the younger of such sons and the heirs of his and their body and bodies, and in default of such issue, *in trust* for all and every the future daughter and daughters of my body lawfully issuing, to be divided between or amongst them, if more than one, share and share alike as tenants in common and not as joint-tenants, and the several and respective heirs of the body and bodies of all and every such daughter and daughters, and if there shall be but one such daughter then *in trust* for such only daughter and the heirs of her body, and in case there shall be more than one such daughter, and there shall be a failure of lawful issue of the body or bodies of any such daughter or daughters, then as to the original part and share, parts and shares of any such daughter or daughters, whose issue shall so fail, as well as to such other part and share, or parts and shares as by virtue of this present clause shall have become vested in or have accrued unto any such the same daughter or daughters, or her or their issue, upon the failure of issue of any other or others of the said daughters, *in trust* for the remaining and other or others of the said daughters, to be

equally divided between or among them, if more than one, share and share alike, as tenants in common and not as joint-tenants, and the several and respective heirs of the body and bodies of such remaining and other daughters, and if there shall be but one such remaining daughter, *then in trust* for that one daughter, and the heirs of her body, and for want of such issue *in trust for my own right heirs for ever**. *Provided always*, and my will and mind is, and I have so directed the lands so to be purchased as aforesaid, to be conveyed and assured to the use of my said trustees or trustee so purchasing the same their or his heirs in manner aforesaid, in order and to the end and intent that the legal estate and inheritance in fee-simple thereof may be thereby vested in such trustees or trustee, and that they or he, their or his heirs shall stand seized thereof, *in trust*, and for the purpose of supporting and preserving the said several future contingent limitations to the issue of my said children respectively, as fully and effectually to all intents, constructions and purposes as if I had limited particular estates to trustees during the lives of my said children respectively, or otherwise upon or for such express trust or purpose, it being my intent and meaning that no person shall under

* As the limitation to the testator's right heirs is not to be until default of his issue, it is requisite to limit these estates tail to his future children, in order to carry the estate to the issue of such children. But this will give such future children themselves of course estates tail in the premises, which puts them upon a much better footing than the present children, who are to have no benefit at all of the trust premises; but there is no extending the benefit through failure of issue of the testator in any other manner; and it will be an easy matter upon the birth of any future child, to add a limitation to the issue of such child, like those of the issue of the present children, and for the testator to execute the will with such additions and alterations.

the limitations and trusts aforesaid, become entitled to the same lands in possession, or to the rents and profits thereof during such time as any antecedent limitation remains in contingency and capable of taking effect, (that is to say,) whilst there is any possibility in the eye of the law, of any other person or persons coming in *esse*, who if then in *esse* would take a prior estate in the same lands under the trusts and limitations herein before expressed or contained; And as to the interest, dividends and proceed of the said trust monies and effects so directed to be invested in the purchase of lands as aforesaid, and the rents, issues and profits of the lands to be purchased therewith, which shall arise or accrue as well from the time of my decease, until some person or persons shall become entitled thereto in possession under the limitations aforesaid, as during any interval which may happen from the determination of any preceding limitation once vested in possession, and the vesting in possession of the next subsequent limitation which shall happen to take effect in possession under the limitations and trusts of this my will, I do hereby will and direct that the same shall be received by the trustees or trustee of the said trust monies, estates and premises for the time being, to accumulate and be invested in his or their names in the purchase of other like lands and hereditaments in fee-simple as aforesaid, to be conveyed and assured to such and the same uses, upon such and the same trusts, and to and for such and the same intents and purposes, and under and subject to such and the same provisions, limitations and directions as are in and by this my will limited, expressed, declared or directed of and concerning the lands

so directed to be purchased with the said monies to arise from the residue of my said personal estate and effects, or to, for and upon, and subject to such or so many of them as shall then be subsisting, undetermined or capable of taking effect. *And* I do hereby further will, declare and direct, that in the mean time, and until the monies so arising from the residue of my said personal estate and effects so directed to be invested in the purchase of lands upon the aforesaid trusts, and the interest, dividends and produce thereof so directed to accumulate and be invested as aforesaid, and such of the rents and profits of the lands, so to be purchased, as are herein before directed to accumulate and be invested in the purchase of lands pursuant to the directions or trusts in this my will expressed or contained in that behalf, the trustees or trustee of the same trust monies, estates and premises for the time being, shall and do invest the same in their or his own name or names, in parliamentary stocks, or the public funds, or real or government securities, at interest, and alter and change the same securities as often as they shall think fit, and shall, and do pay, apply and dispose of the interest, dividends and produce thereof, according to the same trusts, for the same ends, intents and purposes, to the same person or persons, and in the same manner, in all respects, as the rents and profits of the lands to be purchased with the aforesaid trust monies and effects under the trusts aforesaid would be payable, and liable to be applied and disposed of, in case such lands were then actually purchased.

** Devise of freehold and copyhold estates to trustees to be sold.*

I Give and bequeath unto my friend *A. B.* and *C. D.* their heirs, executors, administrators and assigns, *All that* my freehold messuage or tenement, farm, lands and hereditaments, situate, lying and being in ——— with the appurtenances, and also all those the customary or copyhold messuages and hereditaments situate and being in ——— of which I am seized to me and my heirs, at the will of the lord, by copy of court roll, according to the custom of the manor of ——— and which I have surrendered to the use of this my will, with their and every of their appurtenances, *To hold* such of the said hereditaments as are freehold, to the use of them the said *A. B.* and *C. D.* and their heirs, *And to hold* such of the said hereditaments as are customary or copyhold, to the use of them the said *A. B.* and *C. D.* and their heirs, at the will of the lord, according to the custom of the said manor; but both as to the said customary or copyhold hereditaments, *upon trust*, that they the said *A. B.* and *C. D.* or the survivor of them, or the heirs, executors or administrators of such survivor, do and shall with all convenient speed after my decease, sell, dispose of and convey, all and singular my said freehold and copyhold hereditaments and premises, with the appurtenances and the inheritance thereof in fee-simple, either entirely and together, or in parcels, by public auction or private contract, unto any person or persons who shall be willing to become and be the purchaser or pur-

chasers of the same hereditaments and premises, or any part thereof, for the most money that can be reasonably had for the same, And do and shall for that purpose make and execute all such deeds, conveyances, surrenders and assurances as they the said *A. B.* and *C. D.* or the survivor of them, or the heirs or assigns of such survivor, shall think fit; and I do hereby declare my will to be, that upon payment of the money to arise by such sale or sales of the said hereditaments and premises hereby made saleable, or any of them, or any part or parts thereof respectively, it shall and may be lawful to and for the said *A. B.* and *C. D.* and the survivor of them, and the heirs and assigns of such survivor, to give and sign any receipt or receipts for the money to arise by such sale or sales as aforesaid, or any part or parts thereof respectively, which receipt or receipts shall be good and sufficient discharge and discharges to any purchaser or purchasers, his, her, and their respective heirs, executors, administrators and assigns, for so much of the said purchase money as shall be therein expressed or acknowledged to be received, and such purchaser or purchasers, his, her and their respective heirs, executors, administrators or assigns, shall not afterwards be obliged to see to the application of such purchase money, or be answerable or accountable for any loss, misapplication or non-application thereof, or of any part thereof respectively; And my will and mind is, and I do hereby direct that the said *A. B.* and *C. D.* and the survivor of them, and the heirs administrators and assigns of such survivor shall stand possessed of and interested in the monies to arise by such sale or sales respectively as aforesaid, upon the several trusts, and for the several ends, intents

and purposes, and subject to, with and under the several powers, provisoes, conditions, declarations and agreements hereinafter mentioned and contained of and concerning the the same respectively. (*Here insert the trusts and usual provisoes for indemnification of trustees and purchasers.*)

¶ If the copyhold part be of great value, and the lord's fine on admission arbitrary, it may be desirable to give the trustees only a bare power to sell, in which case their admission prior to a sale will not be required, and consequently a fine saved. And it may not be amiss to observe, that in all cases of sale by devisees under a recent will, that it is prudent for the purchaser to have the will proved per testes in Chancery against the heir at law, or else to have the concurrence of the heir at law in the conveyance. To be sure this cannot be said to be necessary, it is only cautionary to avoid the difficulty one may otherwise be put to by the heir at law, should he contest the will after the witnesses are dead. In the mode last mentioned there would be no devise to the executor; but an authority given him by the will to sell, would enable him to do so, and the purchaser would come in under the will and not under the trustees or executors, they not having the legal estates. And to avoid all questions in regard to the possession at the time of the sale, and put it beyond dispute that the possession itself passed with the conveyance to the purchaser, I should (were I the purchaser) desire to have a conveyance made to me by feoffment (in case the heir at law does not join in the conveyance, in which case a lease and release might be sufficient) to which I would add a bargain and sale inrolled, and after such conveyance I would levy a fine, to the use of myself in fee, in order that the heir at law might thereby be put to his claim within

five years (if under no legal incapacity) or be silent for ever after.

** Cross remainders limited between children and grandchildren by will.*

*I***N** *trust* for all and every my son and sons, daughter and daughters, for and during the term of their respective natural lives, to be equally divided between them, if more than one, share and share alike, to take as tenants in common, and not as joint-tenants; and if I shall have but one such son or daughter, then *upon trust* for such only son or daughter during the term of his or her natural life, and after the several and respective deaths of such son or sons, daughter or daughters, then as to their several and respective part and parts, share and shares, *upon trust* for all and every his, her or their child or children, their heirs and assigns for ever, to be equally divided amongst them, if more than one, share and share alike, as tenants in common and not as joint-tenants, and if but one such child, then to the use of such only child, his or her heirs and assigns for ever; but in case any such children of my sons and daughters, being sons, shall die under his or their age or ages of twenty-one years, or being daughters, under the age of twenty one years and unmarried, then and in such case, *upon trust* as to the original part and share, parts and shares (as well concerning such other part and share, parts and shares, as by virtue of this present clause, shall have become vested in and accrued unto any other of the children of my said sons or daughters

by the same father or mother, upon the death of any other or others of such last mentioned children as aforesaid,) for the survivors or others of such children by the same father or mother, and their heirs and assigns for ever, equally to be divided between such remaining and other children of my said sons and daughters, if more than one, share and share alike, as tenants in common and not as joint-tenants; and if there shall be but one such remaining or other child, *then upon trust* for that child, and his heirs and assigns for ever; but in case all such child or children, by the same father or mother, as shall be sons, shall happen to die before their or any of their respective age or ages of twenty one years, and in case all and such of them as shall be daughters, shall happen to die before their or any of their respective age or ages of twenty-one years, or marriage, then and in such case as to the original part or parts, share or shares of the same child or children by the same father or mother, as well as to such other part or parts, share or shares as by virtue of this present clause shall have become vested in or accrued unto such surviving child or children by the same father or mother, *in trust* for all and every my other son or sons, daughter and daughters, and the children of such sons and daughters, in case any of them shall happen to be dead leaving issue, in equal shares and proportions, but the child and children of such of the said son and sons, daughter and daughters, as shall then happen to be dead, shall be entitled only to the share which his, her or their father or mother would have been entitled to if living, equally to be divided amongst such children, if more than one, share and share alike, to

take as tenants in common and not as joint-tenants, and if there shall be but one child, then to that child; but my said sons and daughters who shall be then living, and the children of my said sons and daughters who shall be then dead, shall respectively be entitled by this my will, only to such estate and interest in such accruing part or parts, share or shares, and be liable respectively to the same contingency of survivorship between and among my surviving son or sons, daughter or daughters, and the children of such sons or daughters, in case any of them shall happen to be dead leaving issue, as aforesaid, as is hereinbefore by me given, devised and directed concerning his her or their original part or parts, share or shares of my real estate. *Provided nevertheless*, and my will is, that in case any or either of my said son or sons, daughter or daughters shall happen to die without leaving children, then and in such case, from and immediately after the decease of any or either of my said sons or daughters, without leaving children as aforesaid, my said trustees and the survivor of them, and the heirs of such survivor, shall stand seized of my real estates, in trust as to the original part and parts, share and shares of such sons and daughters, who shall depart this life without leaving children, as well as to such other part and share, parts and shares, as by virtue of this present clause shall have become vested in, or accrued unto, such of the same son or sons, daughter or daughters, upon the death of any other of my said sons and daughters, without leaving children of such sons and daughters respectively, in case any of them shall happen to be dead leaving issue,

in equal shares and proportions; but such sons and daughters, and the child and children of such the said sons and daughters as shall happen to be dead, shall be respectively entitled only to such share, estate and interest, of and in such accruing part and parts, share and shares of my said real estate, and the same shall be liable to the like contingencies of survivorship to and among my surviving son and sons, daughter and daughters, and the children of such sons and daughters, in case any of them shall happen to be dead without leaving issue, in manner as I have hereinbefore given, devised and directed, of and concerning the original part and parts, share and shares of such sons and daughters and their children. *Provided also*, and my further will is, that in case all my said sons and daughters shall happen to depart this life without any child or children of them or any of them living at his or their respective deaths, or there being such child or children, all such of them as shall be sons, shall die under the age of twenty-one years, and all such of them as shall be daughters, shall die under the age of twenty-one years, and unmarried, then and in such case the part and share, parts and shares of each of them my said children shall be, go and remain *to the use and behoof* of my brothers _____ and _____ their heirs and assigns for ever, equally to be divided between them as tenants in common and not as joint-tenants.

* *Proviso enjoining the devisees to take the name and use the arms of testator.*

PROVIDED *always*, and it is my will and meaning, that all and every person and persons, who by virtue of this my will shall become entitled to the possession, or to the rents and profits of my mansion house and estates in ——— herein before devised, shall and do within the space of two years next after he and they shall severally become entitled to the possession, or to the rents and profits thereof. take upon him and them, and use in all deeds and writings whereto or wherein he or they shall be party or parties, the surname of *A.* after his or their own surname and surnames, and also shall and do quarter the arms of *A.* with his or their own family arms, and shall and do within the said space of two years, apply for and endeavour to obtain an act of parliament, or a proper licence from the crown, or take such other means as may be requisite or necessary or proper to enable and authorise him or them respectively to take and bear the said surname and arms of *A.* And in case any such person or persons shall refuse or neglect so to take such surname and arms, and to take such proper steps or means as may be requisite to enable and authorize him or them so to do within the space of two years, then it is my express will and meaning, that from and after the expiration of two years, the gift, devise and limitation of all and every the manors and hereditaments aforesaid, shall in such case immediately thereupon go to the next person in

remainder in this my will, in the same manner as if such person or persons so neglecting or refusing, being tenant or tenants for life, was or were actually dead, or being tenant or tenants in tail, was or were actually dead without issue, without prejudice nevertheless to any lease or leases, demise or demises, which before such cessation or determination shall have been granted or demised of any of the said hereditaments, in pursuance of the power hereinafter in that behalf contained, and provided nevertheless, that the cessation or determination of the estate of any tenant for life, shall not operate to exclude, prevent, or prejudice any of the contingent remainders herein before limited to his or her sons or daughters, or any other person or persons, but that the remainder limited to the said trustees and their heirs during the life of such tenant for life, shall after such cessation or determination, take effect and continue for preserving such remainder, giving them effect as they may arise; and that the said trustees and their heirs shall after such cessation or determination, and during the suspense and contingency of any such their expectant remainder, receive pay and apply the rents and profits of the same premises which would belong to such tenant for life, if such cessation or determination had not taken place, unto such person or persons, or for such intents and purposes, and in the same manner, as under and by virtue of the limitations and provisoes in this my will contained, the same would be payable and applicable to respectively, in case such tenant for life were actually dead, charged and chargeable nevertheless and subject and without prejudice to any such jointure or jointures, portion or portions, with the term

or terms, remedies and securities for the same respective lease or leases, and demises, as before such cessation or determination of the estate of the person or persons so neglecting or refusing, shall have been limited, settled, appointed, created, granted or demised, of or in the said hereditaments hereby devised, or any of them, by any of the devisees thereof pursuant to and by virtue of the powers hereinafter for these purposes respectively contained, or any of them.

** Power enabling a devisee to charge the devised estate with jointures.*

PROVIDED likewise, and it is my further will and meaning, that it shall and may be lawful to and for my said nephew R. A. when he shall by virtue of this my will, be entitled to the possession of the rents and profits of the said hereditaments and premises, herein before by me devised, or any of them, by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by him in the presence of, and attested by two or more credible witnesses, to grant, limit, settle or appoint, to or to the use of any woman or women, whom he shall hereafter happen to marry, and that either before or after his marriage with her or them respectively, for or during the term of the natural life or lives of such woman or women respectively, for or in the name of her or their jointure or jointures, or of part of her or their jointure or jointures, any annual sum or yearly rent-charge not exceeding £—— by the year,

tax free, and without any deductions, to be issuing out of and to be charged and chargeable upon all or any part of the said manors and hereditaments, whereof he shall be then entitled to the possession, or the rents and profits thereof, and also to annex to such rent charge or rent charges such powers or remedies for the recovering and receiving the same when in arrear, and to raise, create and demise such trust, term or terms of years respectively, of or in the hereditaments so charged, and under such trusts, powers and provisoes, for the better securing the due payment of the same rent charge or rent charges respectively, from, and immediately after the decease of the said *R. A.* as are usually annexed to rent charges, and raised, created or demised for securing the same. *And also* that it shall and may be lawful to and for my said nephew *R. A.* by the same or any other deed or deeds, instrument or instruments to be executed and attested as aforesaid, to charge all and every or any of the said manors, hereditaments and premises whereof he shall then be entitled to the possession, or the rents and profits thereof, with the payment of such sum or sums of money as he shall think fit, not exceeding in the whole £—— for the portion or portions of all and every, or any of his daughter or daughters, and younger son or younger sons which he shall happen to have by the woman or women he shall marry; and also with such sum or sums of money as he shall think fit for the maintenance and education of such daughter or daughters living to attain the age of twenty-one years, or to be married, and younger son or sons living to attain the age of twenty-one years, so as the same do not exceed the interest of their

respective portions after the rate of £—— per cent. per annum, and to raise, create and demise such trusts, term or terms of years respectively of or in the hereditaments so charged, and under such trust, powers and provisos for securing the payment of the same portions and maintenance as is or are usual for such purposes.

PROVIDED also, and it is my further will and meaning that it shall and may be lawful to and for the said *T. A. J. A. F. A.* and *W. A.* and each and every of them respectively, as and when they respectively shall be entitled to the possession, or to the rents and profits of the said manors and hereditaments herein before by me devised, or any of them, by any deed or deeds, instrument or instruments in writing to be sealed and delivered by them respectively, in the presence of and attested by two or more credible witnesses, to grant, limit, settle or appoint to or to the use of, or in trust for any woman or women whom they respectively shall happen to marry; and that either before or after such marriage respectively; for and during the natural life or lives of such woman or women respectively, for or in the name of her or their jointure or jointures, or of part of her or their jointure or jointures, any annual sum or yearly rent charge not exceeding £—— by the year, tax free, and without any deduction to be issuing out of and to be charged and chargeable upon all or any part of the said manors and hereditaments whereof they respectively shall then be entitled to the possession, or to the rents and profits thereof, and also to annex to such rent charge or rent charges respectively, such powers and

remedies for the recovery of the same when in arrear, and to raise, create and demise such trust, term or terms of years respectively of or in the hereditaments so charged, and under such trust, powers and provisos for the better securing the due payment of the same rent charge or rent charges respectively, from and immediately after the decease of them the said *T. A.* *J. A.* *F. A.* and *W. A.* respectively, as are usually annexed to rent charges, or raised, created or demised for securing the same. *Provided nevertheless*, and it is my mind and will that my said estates shall not be subject to the payment of more than two such jointures, or rent charges, at one and the same time, but nevertheless, the execution of the aforesaid jointuring power by any of the persons to whom it is given as aforesaid, shall not be prevented, prejudiced or invalidated by reason of there being two or more such jointures or rent charges then subsisting and charged upon the said estates, but shall be good and effectual notwithstanding the said estates shall not be liable or subject to the payment of the jointure or rent charge thereby limited, settled or appointed so long as two other such jointures or rent charges as aforesaid, prior thereto, shall be subsisting, charged upon the said estates or any part thereof. *Provided also*, and it is my further will and meaning, that it shall and may be lawful to and for the said ———— (*the trustees*) and the survivors and survivor of them, and the executors, administrators and assigns of such survivor from time to time during the continuance of the said term of 500 years, and from and after the expiration or other sooner determination thereof for the said *R. A.* *T. A.* *J. A.* and *W. A.* respectively, as and when they shall respectively be entitled

to the possession or to the rents and profits of the said manors and hereditaments in the said county of ——— and kingdom of Ireland, by this my will devised as aforesaid, by indenture or indentures to be sealed and delivered by them respectively, in the presence of and attested by two or more credible witnesses, to make any demise or lease, demises or leases of all or any part of the said hereditaments and premises in the said county of ——— and kingdom of Ireland, whereof they shall respectively be entitled to the possession, or to the rents and profits thereof, for any term or number of years not exceeding twenty-one years, as to the premises in the said county of ——— and not exceeding thirty-one years as to the premises in the said kingdom of Ireland in possession, and not in reversion, or by way of future interest, and subject to the restrictions hereinafter mentioned, And also that it shall and may be lawful to and for the said *R. A. T. A. J. A. E. A. and W. A.* respectively, from time to time, and at all times during their respective lives as and when they shall respectively be in possession of, or entitled to the rents and profits of the said manors and hereditaments in the said counties of ——— and ——— by this my will devised as aforesaid, by indenture or indentures, to be sealed and delivered by them respectively, in the presence of and attested by two or more credible witnesses, to make any demise or lease, demises or leases, of all or any part of the hereditaments and premises, in the said counties of ——— and ——— whereof they shall so respectively be entitled to the possession, or to the rents and profits (except my mansion house at ——— with the appurtenances and the lands and hereditaments

occupied therewith) for any term or number of years not exceeding twenty-one years, in possession and not in reversion, or by way of future interest, Provided and so that there is reserved in every such future demise or lease of the premises in the said county of ——— kingdom of Ireland, and counties of ——— and ——— or any of them, or any part thereof, the best and most improved yearly rent to be incident to the immediate reversion of the premises so to be demised that can be reasonably had or got for the same, without taking any fine, premium, or foregift, or any thing in the nature of a fine, premium, or foregift for the making thereof, and so as there be contained in every such demise or lease, a condition of re-entry on non-payment of the rent thereby to be reserved, and so as the lessee or lessees to whom such lease or leases shall be made, do execute a counterpart or counterparts thereof, and do thereby covenant for the due payment of the rent to be thereby respectively reserved, and be not by any clause or words therein contained made dispunishable for waste, or exempted from punishment for committing waste.

** Power of selling and exchanging.*

PROVIDED also, and it is my further will and meaning, that it shall and may be lawful to and for the said *R. A. T. A. J. A. F. A.* and *W. A.* respectively, from time to time during their respective lives, as and when they shall respectively be entitled to the possession, or to the rents and profits of the said manors and hereditaments hereby devised, with

the consent and approbation of the said ——— (trustees) or the survivors or survivor of them, his executors or administrators, testified in writing under their or his hands and seals, hand and seal (notwithstanding any of the uses, estates, limitations or trusts herein before devised, limited and contained) to make sale of and dispose of, or to convey in exchange for any other manors, messuages, lands and hereditaments free from incumbrances, to be situate somewhere in England, if the hereditaments shall be so conveyed in exchange, are in England, or to be situate either in England or Ireland, if the hereditaments which shall be so conveyed in exchange, are situate in Ireland, all or any part or parts of the said manors, messuages, lands and hereditaments hereby devised, and the fee simple thereof, to any person or persons whomsoever, and for the end or purpose of making any such sale or exchange by any deed or deeds, writing or writings, under the hand and seal of such of them the said *R. A. T. A. J. A. F. A.* and *W. A.* as shall then be in possession or entitled to the possession, or to the rents and profits of the said manors and hereditaments hereby devised, attested by two or more credible witnesses, and with such consent and approbation as last mentioned, to revoke and make void all and every the uses, trusts and limitations, powers and provisoes herein before devised, limited and contained of and concerning the same premises respectively, or any part thereof, and to limit, declare or appoint such new or other use or uses, trust or trusts, estate or estates of and concerning the same, as shall be requisite and necessary to effectuate such sale or exchange, but subject nevertheless, and without preju-

dice to any lease or leases which shall then have been granted or demised of any of the said devised premises, by virtue and in pursuance of the said powers herein before in that behalf contained, or any of them; And it is my further will and meaning, and I declare that all and every the monies arising by such sale or sales as aforesaid, shall be paid to and be received by them the said _____ or the survivors or survivor of them, his executors or administrators, whom I do hereby authorize and empower, upon payment of the money arising by sale or sales of any part of the said premises, to sign and give proper receipts for such purchase money; and I do hereby will and declare, that such receipt and receipts shall be a sufficient discharge to any purchaser or purchasers, for so much of the purchase money as shall in such receipt or receipts be acknowledged or expressed to be received, and such purchaser or purchasers shall not afterwards be answerable for any loss, misapplication, or non-application of the said purchase money, or be in anywise concerned to see to the application thereof, which money is so to be paid to and received by the said _____ (*trustees*) or the survivors or survivor of them, his executors or administrators *in trust*, to be by them or him forthwith, or as soon as conveniently may be, laid out and invested with the consent and approbation of the person or persons for the time being who shall be entitled to the rents of my said real estates) in the purchase of other manors, messuages, lands and tenements or hereditaments in fee-simple, free from incumbrances, to be situate somewhere in England, or to be situate either in England or Ireland, if the hereditaments which shall be sold for such money are in

Ireland, and that thereupon as well the manors, messuages and hereditaments so to be purchased, as all and every the manors, messuages, lands and hereditaments, which shall come or be taken by way of or in exchange for any part of the said premises hereby devised as aforesaid, shall be settled, conveyed and assured to such and the same trusts, and under and subject to such and the same charges, powers, provisoes, limitations, and conditions, as under and by virtue of the limitations in this my will stood limited, declared and subsisting at or immediately before the time of such sale or sales respectively, of and concerning the hereditaments so sold, or to, for, upon and subject to such and so many of them as shall be then undetermined and capable of taking effect (except only this present power of selling and exchanging.)

** Power of appointing new trustees, with the usual indemnifications, &c.*

PROVIDED *always*, and I do hereby declare, that if the said ——— and ——— or either of them, their or either of their executors, administrators or assigns, or any trustee or trustees to be appointed in the stead or place of them or any of them, in pursuance of this my will shall die, or be desirous to be discharged from, or refuse or decline, or become incapable to act in the trusts hereby in them respectively reposed as aforesaid, before the said trusts shall be fully executed, performed or discharged, then and in such case, and when and so often as the same shall happen, it shall and may be lawful to and for the survivor of

them, and the executors, administrators and assigns of such survivor, by any writing or writings under his or their hands or seals, or hand or seal, and to be attested by two or more credible witnesses, from time to time to nominate or appoint any other person or persons to be a trustee or trustees in the stead or place of the trustee or trustees so dying or desiring to be discharged, or refusing, declining, or becoming incapable to act as aforesaid, and that when and so often as any such new trustee or trustees shall be nominated and appointed as aforesaid, all the trust estates, monies, and premises which shall then be vested in the trustee or trustees so dying or desiring to be discharged, or refusing, declining, or becoming incapable to act as aforesaid, either solely or jointly, with the other trustee or trustees, shall be thereupon with all convenient speed, conveyed, assigned and transferred in such sort and manner, and so as that the same shall and may be legally and effectually vested in the surviving or continuing trustee or trustees, and such new one other trustee or trustees, or if there shall be no continuing trustee or trustees, then in such new trustees, and upon the same trusts as are herein before declared of and concerning the same trust estates, monies and premises respectively, or such of them as shall or may be subsisting and capable of taking effect; and that any such new trustee or trustees shall and may in all things act and assist in the management, carrying on, and execution of the trusts to which they shall be so appointed, in conjunction with the other their surviving or continuing trustee or trustees, if there shall be any surviving or continuing trustee or trustees, if not, then by themselves, as fully and effectually, and with all the same

power and powers, authority and authorities of consent, approbation, discretion, calling in, laying out and investing, compounding, compromising, giving and signing effectual indemnifications and discharges to purchasers, mortgagees or others, and all other powers and authorities whatsoever, to all intents and purposes whatsoever, as if he or they had been originally in and by this my will appointed trustee or trustees for the purposes for which such new trustee or trustees respectively shall be appointed trustee or trustees, their or his heirs, executors or administrators, in or to whose place such new trustee or trustees shall respectively come or succeed, are or is enabled to do, or could or might have done under and by virtue of this my will, if then living or continuing to act in the trusts hereby reposed in them, any thing herein before contained to the contrary thereof in anywise notwithstanding; and I particularly recommend and request that such substitution or nomination of a new trustee may be made on the death or resignation of any of the said trustees, or within three months after such event shall take place.

PROVIDED *always*, and my will and meaning is that the said ——— and ——— their heirs, executors, administrators and assigns, shall be charged and chargeable only with and for such monies as he or they shall respectively actually receive by virtue of the trusts hereby in them reposed, nor shall he or they, or any of them be answerable or accountable for any banker or broker, goldsmith, or other person with whom, or in whose hands any part of the said trust monies shall or may be deposited or lodged for safe custody or

otherwise, in the execution of any of the said trusts herein before mentioned, nor shall they or any of them be at any time answerable or accountable for the insufficiency or deficiency of any security or securities, stocks or funds, in or upon which the said trust monies or any part thereof shall be placed out or invested, nor for any loss which may happen to the aforesaid trust premises, except the same shall happen or arise by or through their own wilful default respectively, and that the one of them shall not be answerable or accountable for the other of them, or for the acts, deeds, defaults, receipts or disbursements of the other or others of them, notwithstanding they or either of them shall join in any receipt for conformity, but each of them for the acts, deeds, defaults and disbursements of himself only; and also that they the said ——— and ——— their heirs, executors, administrators or assigns shall and may by and out of the monies which shall or may come to his or their hands by virtue of the trust aforesaid, retain to and reimburse himself and themselves, all costs, charges, damages and expences which he or they shall or may suffer, sustain, expend, disburse, be at, or be put unto, in or about the execution or management of all or any of the trusts hereby in them reposed, or in relation thereunto.

The conclusion of a will.

IN witness whereof, the said ——— the testator to this my last will and testament contained in seven sheets of paper affixed together, have to the first six sheets thereof set

my hand, and to this seventh and last sheet thereof, my hand and seal, this — day of — 1796

Signed, sealed, published, and declared by the said (testator,) as and for his last will and testament, in the presence of us, who in his presence, and in the presence of each other, at his request, have subscribed our names, as witnesses hereto, (*if a duplicate is executed at the same time*) as we have likewise done to a duplicate of the above written will at the same time.

The statute of frauds and perjuries, 29 Car. 2. c. 3. directs that all devises of lands and tenements shall not only be in writing, but signed by the testator or some other person in his presence and by his express direction; and be subscribed in his presence by three or four credible witnesses; and a similar solemnity is requisite for revoking a devise. It is not necessary that a will should be sealed, neither is it necessary that the witnesses should sign in each other's presence, but all the other solemnities mentioned in the attestation must be strictly complied with. Neither is it necessary that the usual solemnities should be inserted in the attestation, it is sufficient if they subscribe thus "Witness A. B. C." Vide Comyns, 531. Skin. 1109. Vin. Abr. 128. However it is very prudent such solemnities should be inserted, for the witnesses will be credited, if they give evidence that the will was executed without the ceremonies required by the statute in such a case, such evidence not being inconsistent with their handwriting.

- * *A will or rather testamentary appointment by a feme covert, whereby she gives estates to trustees, in order to secure the rents to the use of a feme covert for life, then a life estate to the husband, with a sum of money secured by a term of years, in other respects in favour of the wife, with a power to lease, &c.*

THIS is the last will and testament, or a writing in nature of the last will of me *A. D.* the wife of *C. D.* esq. being, or being intended to be also an appointment made pursuant to, and by force and virtue, and in exercise and execution of the power and authority to me for this purpose, given in and by certain indentures of lease and release, bearing date respectively, the — and — days of — 1795 the release being of four parts, and made or expressed to be made between *C. D.* the elder of the first part, the said *C. D.* my husband of the second part, me the said *A. D.* of the third part, and *R. H.* and *H. B.* of the fourth part, and of every other power and authority whatsoever, enabling me in this behalf, *Do* by this writing signed and sealed by me in the presence of three credible witnesses, whose names are intended to be written or indorsed hereon as witnesses to my having signed and sealed the same, and which writing I hereby declare to be and contain my last will and testament, *limit, direct, and appoint*, that All that, and those my messuages, and tenements, lands and hereditaments, herein after

particularly mentioned and described, that is to say (*Here describe the estates*) shall from and immediately after my decease go, continue, and be unto *G. H.* and *J. K.* both of, &c. esqrs. and their heirs, to and for the several uses, estates, intents and purposes hereinafter limited, (that is to say) *To the use and behoof* of such person or persons, for such estate or estates, interest or interests, uses, intents and purposes, and subject to such payments, conditions and restrictions, and in such manner and form as my son in law *J. S.* and my daughter *A.* his wife shall at any time or times after my decease, during and notwithstanding her coverture, by any deed or deeds, writing or writings, to be by them sealed and delivered in the presence of two or more credible witnesses, give, limit, declare, direct or appoint; and for want of, and until such gift, limitation, declaration, direction or appointment, and as to so much and such part of the premises, or of the estate or interest therein, whereof no such gift, limitation, declaration direction or appointment shall be made *To the use and behoof* of the said *G. H.* and *J. K.* their executors and administrators, for and during the joint lives of the said *J. S.* and *A.* his wife, *upon the trusts*, and for the several ends, intents and purposes following (that is to say) *Upon trust* that they the said *G. H.* and *J. K.* their executors and administrators, shall and do from time to time during the lives of the said *J. S.* and *A.* his wife, pay and dispose of the yearly and other rents, issues and profits, of all the same messuages or tenements, land and premises unto such person and persons, and in such parts and proportions, manner and form as the said *A.* shall from time to time during and notwithstanding her coverture by any

writing or writings under her own hand only direct or appoint, *To the intent* that the same may not be at the disposal of, or subject or liable to the controul, forfeiture, debts or engagements of the said *J. S.* her husband, but only at her own sole and separate disposal, And in default of, and until such direction or appointment, and as often as no such shall be in force, do and shall pay the same rents, issues and profits into the proper hands of the said *A. G.* or otherwise shall and do permit and suffer her to receive and take the same, to and for her own sole and separate use and benefit, whose receipt under her hand, I do hereby declare shall from time to time notwithstanding her coverture, be a sufficient discharge to the person or persons who shall pay the same, for so much thereof for which such receipt shall be given. And from and immediately after the determination of the estate and interest limited to the said *G. H.* and *J. K.* their executors and administrators, of and in the aforesaid premises, in manner hereinbefore mentioned, in case the same shall determine by the death of the said *J. S.* during the life-time of the said *A.* *to the use and behoof* of the said *A. S.* her heirs and assigns for ever; but in case the same shall determine by the death of the said *A. S.* during the life-time of the said *J. S.* to the use and behoof of *L. M.* and *N. O.* both of, &c. gentlemen, their executors, administrators and assigns, for during and until the full end and term of two hundred years from henceforth next ensuing, and fully to be complete and ended, without impeachment of waste (upon the trusts, and for the ends, intents and purposes hereinafter mentioned of and concerning the same). And from and immediately after the determination of that estate, and subject thereto, *to the use and behoof* of the said

J. S. and his assigns for and during the term of his natural life, without impeachment of waste, other than wilful or permissive waste in pulling down houses or buildings, or suffering the same to run to decay, without repairing or rebuilding the same, And from and after the determination of that estate and subject thereto, *to the use and behoof* of such person and persons for such estate and estates, interest or interests, uses intents and purposes, and subject and liable to such payments, conditions and restrictions, and in such manner and form as the said A. shall at any time or times during and notwithstanding her coverture, by any deed or deeds, writing or writings, with or without power of revocation, to be by her sealed and delivered in the presence of two or more witnesses, who shall attest the same, or by her last will and testament in writing, or any writing or writings purporting to be her last will and testament, or in the nature thereof, or any codicil or codicils to be by her duly executed in the presence of three or more credible witnesses, who shall attest the same, limit, declare, direct or appoint of or concerning the same premises, or of or concerning any part thereof; and for want of and until such limitation, declaration, direction or appointment, and as to so much and such part of the premises or estate or interest therein, whereof no such limitation, declaration, direction or appointment shall be made, *to the only and absolute use and behoof* of the said A. S. her heirs and assigns for ever; And it is my will and mind, and I do hereby declare that the said term of 200 years is so as aforesaid limited in use to the said L. M. and N. O. their executors, administrators, and assigns, *upon this special trust*, that they the said L. M. and N. O. or

the survivor of them, or the executors or administrators of such survivor, shall and do within three calendar months after the death of the said *A. S.* in the life-time of the said *J. S.* her husband, by and out of the rents, issues and profits of the said premises so to them limited for the said term of 200 years as aforesaid, or by demise, sale, or other disposition of the premises comprized in the same term, for the whole or any part of the said term, or by all the said ways, or by any other ways or means as shall be by them the said *L. M.* and *N. O.* or the survivor of them, or the executors or administrators of such survivor thought fit and convenient, levy and raise the sum of £—— of lawful money of Great Britain, together with interest for the same, at the rate of £—— per cent. per annum, to be computed from the death of the said *A. S.* and pay the same unto the said *J. S.* his executors, administrators or assigns, for his and their absolute use and benefit; *And upon further trust*, that from and after payment of the said sum of £—— together with the interest for the same as aforesaid, unto the said *J. S.* his executors, administrators or assigns, and full payment and satisfaction unto the said *L. M.* and *N. O.* or the survivor of them, or the executors or administrators of such survivor, of all costs, charges, and expences which he or any of them shall or may be put unto in or about the execution of the said trusts, the said term of 200 years of and in the said premises, or in so much thereof as shall remain unfold or undisposed of for the purposes aforesaid, shall cease, determine, and be absolutely void; and with respect to so much and such part or parts thereof as shall have been so mortgaged or disposed of for the purposes aforesaid, shall

(subject and without prejudice to such mortgage or other disposition) attend, wait upon and go along with the freehold and inheritance of the same premises expectant on the said term, according to the uses and estates thereof by this my will limited, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding. *Provided always,* and it is my mind and will, and I do hereby declare that it shall be lawful for the said *G. H.* and *I. K.* their executors or administrators, at any time or times after my decease, and during the joint lives of the said *J. S.* and *A.* his wife, with her consent and approbation testified in writing for that purpose, to demise or lease all and singular or any part of the premises, to any person or persons whomsoever, for any time or term whatsoever, not exceeding twenty-one years, to take effect in possession and not in reversion, or by way of future interest, so as in and by every such demise or lease there be reserved and made payable the best and most improved yearly rent that can be got for the same, and so as that no fine, premium or income, or any thing in the nature of a fine, premium or income, be had or taken for granting the same, and so as every such demise or lease be made subject to a proviso for re-entry on non-payment of the rent to be thereby reserved, and do not render the lessee or lessees unimpeachable for waste, and contain all the usual covenants for farming and managing the premises according to the custom of the country. (*Here insert the usual provisos and clauses of indemnification in behalf of trustees*) In witness, &c.

- * *A will containing a general bequest of leasehold estates and monies, upon very special trusts, and subject to a variety of limitations and restrictions.*

I *W. N.* of, &c. jeweller, do hereby revoke all wills, codicils, and other testamentary dispositions made by me at any time heretofore, and do hereby declare this to be my last will and testament. I direct my funeral expences, and all debts which at the time of my decease shall be owing by me to any person or persons whomsoever, to be paid as soon as conveniently may be after my decease, I give and confirm to my dear wife *C. N.* all and singular estates, sums of money, and effects whatsoever, given to her by the will of her grandfather, *J. P.* or the will of her mother, *E. S.* deceased, I give to the said *C. N.* for her own use and benefit, the sum of £——— of lawful money of Great Britain to be paid within two years next after my decease, but to be an interest vested in her immediately upon my decease, and to bear interest in the mean time, after the rate of £5 for every £100 by the year; but my will and meaning is, that the same shall be taken and accepted by her in full discharge and satisfaction of and for all and every sums and sum of money, which under and by virtue of a certain bond or obligation entered into and executed by me before my marriage with my said wife, unto *T. S.* esq. and *H. S.* since deceased, as her trustees, she might be entitled unto, and that she my said wife do and shall previous to her being paid the said sum of £——— and the interest thereof, execute a proper instrument, to declare her acceptance of the said sum of

£—— and the interest thereof, in satisfaction of all and every sums and sum of money by the last mentioned bond intended to be secured to her, or for her benefit, and to release and discharge my heirs, executors and administrators, and all and singular my real and personal estate, of and from all the same sums and sum of money, and all actions, suits, claims and demands for or in respect thereof. I also give unto my said wife, all my household goods, utensils, wine, liquors, provisions, plate, linen, china, watches, trinkets and wearing apparel, for her own absolute use and benefit. I give and bequeath unto my nephew *J. P. D.* the sum of £—— to be an interest vested in and to be paid to him when he shall attain his age of twenty-one years. I give and bequeath unto my nephew *J. N.* and likewise to my niece *E. N.* the sum of —— guineas a-piece of like lawful money, to vest in and be paid to them respectively, in or at their respective ages of twenty-one years, or respective days of marriage which shall first happen, but not to bear interest in the mean time. I also give and bequeath unto *A.* the wife of *J. W.* as a mark of my esteem and friendship, the sum of —— guineas. I give and bequeath to my sister *E. T.* widow, and her assigns, for her life, one annuity or yearly sum of £—— of, &c. I give and bequeath unto my sister *J. D.* widow, and her assigns for her life, one annuity or yearly sum of £—— of, &c. I give and bequeath unto my sister *A.* the wife of *F. B.* esq. and her assigns for life, one annuity or yearly sum of £—— of, &c. to be paid either to such person or persons as she by any writing or writings under her hand shall from time to time direct

or appoint to receive the same, or for want of such direction or appointment into her own proper hands, for her own sole separate and peculiar use and benefit, exclusively of her present or any future husband or husbands, and not to be in anywise subject or liable to his or their debts, controul or interference, and the receipt or receipts of the said *A. B.* or of such person or persons as she shall from time to time direct or appoint to receive the same, to be notwithstanding her present or any future marriage or marriages, a good and effectual discharge, or good and effectual discharges for the said annual sum of £ — or so much thereof as in such receipt or receipts respectively shall be mentioned and acknowledged to be received, The said annuities or yearly sums of £ — £ — and £ — to be paid and payable by two even and equal half yearly payments on the — day of — and — day of — in every year, free and clear of and from all deductions for taxes and other reprints whatsoever, and the first half yearly payment thereof respectively to be made on such of the said days as shall happen first after my decease. I give unto my dear friends *H. S.* of, &c. and *W. R.* of, &c. my executors hereinafter named, the sum of — guineas each for a ring, as a small recompence for the care and trouble they may have in the trusts hereby reposed in them. I give and bequeath unto the said *H. S.* and *W. R.* my leasehold estate at — with its appurtenances, *To hold* the same unto the said *H. S.* and *W. R.* their executors, administrators and assigns, for and during all the term or interest therein which I shall have or be entitled to at the time of my decease, *upon trust* that the said *H. S.* and *W. R.* or the sur-

vivors of them, or the executors, administrators or assigns of such survivor, do and shall with all convenient speed after my decease, sell and absolutely dispose of the same leasehold estate, either altogether or in parcels, and either by public auction or private contract, for such price or prices as they or he shall think reasonable, and do and shall stand and be seized of the money to arise by such sale or sales in manner hereinafter mentioned. And I give and bequeath unto the said *H. S.* and *W. R.* all the rest and residue of my goods, chattels, debts, effects and other personal estate whatsoever and wheresoever, *To hold* the same unto the said *H. S.* and *W. R.* their executors and administrators, *upon trust* that they the said *H. S.* and *W. R.* and the survivor of them, and the executors and administrators of such survivor, do and shall, as soon as the same can conveniently be done, sell and dispose of my stock in trade; and also do and shall call in and compel payment of all debts or sums of money which shall be due and owing to me at the time of my decease, and do and shall sell or convert into money, all my personal chattels and other effects which shall not consist of money; and it is my will that the said *H. S.* and *W. R.* their executors, administrators and assigns, do and shall stand and be possessed of and intitled in as well the money to arise by sale of the said leasehold estate as all the other sums of money which shall come to their or his hands or hand by virtue of this my will, *Upon the trusts* and for the intents and purposes hereinafter mentioned (that is to say) *In the first place*, do and shall, by, with and out of the same, pay my debts, funeral expences, and the legacies hereinbefore by me bequeathed, and do and shall lay out and invest in the names of them the said *H. S.* and

W. R. or the survivor of them, or the executors and administrators of such survivor, a competent sum of money in the purchase of a share or shares of the public stocks or funds of Great Britain, or at interest upon real securities in England, the interest, dividends and annual produce whereof will produce a yearly sum equal to the amount of the annuities hereinbefore bequeathed by me; and do and shall pay and apply the said interest, dividends and yearly produce accordingly; and also do and shall lay out and invest the sum of £—— in the purchase of a share or shares of the public stocks or funds of Great Britain, or upon real securities in England, in the names or name of them the said *H. S.* and *W. R.* or the survivor of them, or the executors and administrators of such survivor, and do and shall pay the interest, dividends and yearly produce of the said sum of £—— or the stocks, funds or securities upon which the same or any part thereof may be laid out or invested, unto, or permit the same to be received by my said dear wife, and her assigns, during the term of her natural life, for her and their own proper use and benefit; and do and shall lay out and invest the further sum of £—— in the names or name of them the said *H. S.* and *W. R.* or the survivor of them, or the executors and administrators of such survivor, in the purchase of, or upon such stocks, funds and securities, or at interest, upon such real securities as aforesaid, to be from time to time altered and varied as occasion shall require, at the discretion of my trustee or trustees for the time being, and do and shall stand and be possessed of, and interested in the said sum of £—— and the stocks, funds or securities in or upon which the same or any part thereof shall be laid out

or invested, and the interest, dividends and annual produce thereof, upon and for the trusts, intents and purposes, and with under and subject to the powers, provisoes and declarations hereinafter contained of and concerning the same, and do and shall stand and be possessed of and interested in all and singular the sums of money which shall come to their or his hands or hand, and which shall remain after payment of my said debts, and the annual and other sums of money hereinbefore mentioned, *in trust* for my dearest son *W.N.* his executors, administrators and assigns, for his and their own proper use and benefit. And I do hereby declare my will and mind to be, and do hereby direct that the said *H. S.* and *W. R.* their executors, administrators and assigns, do and shall stand and be possessed of and interested in the sum of £—— so hereby directed to be by them laid out and invested in such stocks, funds and securities as aforesaid, and the stocks, funds and securities upon which the same or any part thereof shall be laid out and invested, and the interest, dividends and annual produce thereof, upon and for the trusts, intents and purposes, and with and under, and subject to the powers, provisoes and agreements hereinafter expressed and declared of and concerning the same (that is to say) *upon trust* that they the said *H. S.* and *W. R.* and the survivor of them, and executors and administrators of such survivor, do and shall during the life of my said son *W.N.* and so long as he shall not make any grant, bargain, sale, mortgage, assignment or charge of or upon the interest, dividends and annual produce of the said sum of £—— or the stocks, funds and securities upon which the same or any part thereof shall be laid out or invested, or any part thereof, or attempt or agree so to

do, or commit any act to vest the same in any other person or persons, pay the said interest, dividends and annual produce to, or permit the same to be received by my said son *W. N.* or by any other person or persons employed by him to receive the same, to and for his and their own use and benefit; but in case my said son shall at any time or times hereafter make any grant, bargain, sale, mortgage, assignment or charge of the said interest, dividends and annual produce, or any part thereof, or attempt or agree so to do, or commit any act to vest the same in any other person or persons, then and in any of the said cases, do and shall pay, apply, and dispose of the said interest, dividends and annual produce, during the life of him the said *W. N.* not to him the said *W. N.* or for the benefit of the person or persons to whom or in whose favour, or with whom he shall or may have made or attempted to make any such grant, bargain, sale, mortgage, assignment, charge, covenant or agreement, or to or in whom the said interest, dividends and annual produce, or any part thereof, would or might be forfeited, or vested as aforesaid, but to and for such uses, ends, intents and purposes, for the maintenance and support of the said *W. N.* either in payment and discharge of the expences to be incurred by the said *W. N.* for meat, drink, cloathing, washing, phyfic and lodging, or any of them, or any other expences to be incurred by the said *W. N.* or as they the said *H. S.* and *W. R.* or the survivor of them, or the executors or administrators of such survivor shall think proper, it being my true intent and meaning that the said interest, dividends and annual produce, shall not be in anywise liable to, or be affected by the debts, charges and

incumbrances, forfeitures or engagements of the said *W. N.* and after the decease of the said *W. N.* do and shall pay the interest, dividends and annual produce of the said sum of £—— or the stocks, funds or securities, in or upon which the same or any part thereof shall be laid out or invested, to the woman with whom my son may happen to intermarry, who shall be living at the time of his decease, and her assigns, for the term of her natural life. *And upon this further trust*, that if there shall be any child or children of my said son *W. N.* they the said *H. S.* and *W. R.* or the survivor of them, or executor or administrator of such survivor, do and shall pay, transfer, and assign the said £—— and the stocks, funds and securities upon which the same shall or may be laid out or invested, to, between or among such child or children in manner hereinafter mentioned (that is to say) the said sum of £—— and the stocks, funds and securities upon which the same or any part thereof shall be laid out or invested, to become and be a vested interest, or vested interests, in such child or children respectively, and to be paid transferred or assigned to him, her or them respectively, at such age or respective ages in such manner, and if more than one, in such shares and proportions, as my said son *W. N.* by any deed or deeds, instrument or instruments in writing, with or without power of revocation, to be sealed and delivered by him in the presence of and attested by two or more credible witnesses, or by his last will and testament, or by any codicil or codicillary or testamentary instrument in writing, to be signed and published by him in the presence of and attested by the like number of witnesses, shall from time to time direct or appoint; and in

default of such direction or appointment, do and shall stand and be possessed of and interested in the said sum of £—— and the stocks, funds and securities in or upon which the same shall or may be invested and laid out, and the interests, dividends and annual produce thereof, *in trust* for all and every the children and child of my said son *W. N.* who being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age, or marry, and the respective administrators and assigns of such children or child, to be divided between or among such children, if more than one, in equal shares and proportions, and if there shall be but one such child, who being a son, shall attain the age of twenty-one years, or being a daughter, shall attain that age or marry, *in trust* for that only child, his or her executors, administrators and assigns, for his, her or their own proper use and benefit. *Provided always*, and I do hereby declare, that it shall and may be lawful to and for the said *H. S.* and *W. R.* and the survivor of them, or the executors or administrators of such survivor, at any time or times after the decease of the said *W. N.* and such wife (if any) of him the said *W. N.* who shall survive him (or in the lifetime of them, or the survivor of them, if they he or she shall so direct, by any writing or writings under their, his or her hands or hand) to levy and raise by the ways and means aforesaid, any part or parts of the portion or portions intended to be hereby provided for such child or children as aforesaid, not exceeding in the whole for any such child, one moiety or equal half part or share of his or her then expectant portion, and to pay and apply the money so to be raised; for the pre-

ferment, advancement or benefit of such child, in such manner as the said *H. S.* and *W. R.* or the survivor of them, or the executors or administrators of such survivor, shall in their or his discretion think fit, notwithstanding the portion or portions of such child or children shall not then have become vested or payable. And I do hereby declare that the said *H. S.* and *W. R.* their executors, administrators and assigns do and shall, after the decease of my said son *W. N.* and such wife (if any) of him the said *W. N.* who shall be living at the time of his decease, apply all or any part of the interest, dividends and produce of the said sum of £—— and the stocks, funds or securities in or upon which the same or any part thereof shall be laid out or invested to and for the maintenance and education of the child and children, for the time being, of my said son *W. N.* in the mean time, and until his her or their portion or portions shall become payable. And I do further declare, that in case no child of my said son *W. N.* shall become entitled to the said sum of £—— and the stocks, funds and securities in or upon which the same shall or may be laid out or invested, under or by virtue of the trusts hereinbefore declared of or concerning the same, they the said *H. S.* and *W. R.* or the survivor of them, or the executors or administrators of such survivor, do and shall stand possessed of and interested in the said sum of £—— and the stocks, funds and securities upon which the same shall or may be invested or laid out, and the interest, dividends and annual produce thereof, upon the trusts and for the intents and purposes hereinafter declared of and concerning the same, (that is to say)

as to one equal moiety thereof, *in trust* for my nephew *J. N.* his executors, administrators and assigns; and as to the remaining moiety thereof, *in trust* for such person or persons, and for such intents and purposes as my niece *E. N.* shall, whether single or married, by any writing or writings under her hand, direct or appoint the same to be paid, and for want of such direction or appointment, *in trust* to pay the same to the said *E. N.* her executors, administrators and assigns, for her and their proper use and benefit; it being my intent and meaning, that the share hereby by me bequeathed *in trust* for, or for the benefit of my said niece, be for her sole, separate and peculiar use and benefit, and absolutely free from the controul, debts, agreements or interference of her present or any future husband, and her receipts, notwithstanding her marriage, to be good and sufficient discharges for the same respectively, &c.

Of CODICILS.

A Codicil is a schedule or supplement to a will, whereby the testator may add to, explain, alter or retract what he hath before done; it is the same as a testament, but with this exception; that a person may have as many codicils as he pleases, but only one testament. *West Symb. p. 636.* Codicils are considered as part of, and should be annexed to the testament, and the executor is to see that they are performed equally with the will itself.

Some writers, confounding a testament and *codicil* together, call a testament a great will, and a *codicil* a little one; upon which I shall only remark that it is a distinction too puerile to deserve a comment.

The form of a codicil to a will.

THIS is a codicil to be added to and taken as part of the last will and testament of me *A. B.* which bears date on or about the — day of — 1795, whereby I do revoke the devise in my said will contained to my son *W. B.* of all those messuages, tenements, lands and hereditaments therein particularly described, called the — and do give and devise the same messuages or tenements, lands and hereditaments, to my daughter *C. B.* her heirs and assigns for ever. I give and bequeath to my said son *W. B.* in lieu of the said messuage or tenements, lands and hereditaments, the sum of £—. And do hereby ratify and confirm my said will in all other respects. In witness whereof I have hereunto set my hand and seal this — day of — 1796.

Signed, sealed, published and delivered by the said *A. B.* as and for a codicil to his last will and testament, and to be taken as part thereof, in the presence of us, who in his presence, and in the presence of each other have at his request subscribed our names as witnesses hereto.

(Three or four witnesses.)

CONCLUSIVE OBSERVATIONS

ON THE

ENUREMENT AND CONSTRUCTION

OF

DEEDS.

HAVING commenced our observations by an introductory discourse on the nature of deeds in general, and having followed those observations by some cursory remarks on the several species of deeds and other assurances in particular, together with such forms or precedents of each as we apprehended would enable the student to prepare them with technical precision, it may not be amiss to close our enquiries with some of the leading rules and maxims which have been laid down by the courts, relative to their *construction* when so prepared. This will afford the young conveyancer an opportunity of discerning how far he may safely venture to depart from a rigid attention to our preceding remarks, -when particular

circumstances may seem to render such deviation expedient.

I. As to the *enurement* or legal *effect* of a deed. The principal rules laid down by the best ancient authorities, sanctioned by the modern decisions, relative to the *operation* and *effect* of deeds, as taken in the *gross*, are these,

1. If several persons join in a deed, of whom some, from legal disabilities or otherwise, are incapable of entering into such an assurance, the deed shall not be hurt, but be considered to be the act of those who were capable. *Perk.* 66.

2. A deed, though intended for one purpose; yet if it fail in that, may enure to another, *ut magis res valeat quam pereat*; as if it be intended to operate as a release, it will take effect as the grant of a reversion, &c. provided the words of the deed be sufficient for the purpose. *Dy.* 251.

3. When a deed is so constructed as that it may enure to various purposes, the grantee shall have the election of taking it in that way, which he conceives will be most to his advantage; so that such construction do not operate to the prejudice of the grantor. To illustrate this and the preceding rule, I may observe that if a lease for years (in considera-

tion of money) be made by the words, *demise*, *grant*, *bargain and sale*. I may take this as a bargain and sale, or as a demise, at my option; *et sic de similibus*. Dy. 30. 109. 302. 319.

4. But subject to the preceding rules, deeds shall enure as much as may be according to the intention of the parties. *Finch*. 58. and see 3 *Atk*. 136.

5. When the particular intention of the parties is not apparent, the deed shall be construed in a manner most consonant to law and reason. *Perk*. 80. and see *Co. Lit*. 251. b. *Shep. Touch*. 85. pl. 7.

6. If a person have two different estates or interests in the same land, any grant or charge upon it, will enure so as to affect both estates equally; as if a person have a present possession of lands, and moreover an ancient right connected with such possession, and grant a rent-charge out of the land, it will be a charge upon both estates: in like manner as if such separate rights were in different persons, for *quando dua jura concurrunt in una persona, æquum est ac si essent in diversis*. *Perk*. sec. 592.

7. And note, that according to the mode in which deeds enure so are they to be pleaded; as if a grant enure as a *demise* it must be pleaded as such, &c.

II. As to the general *construction* of deeds as instruments of assurance.

1. The construction of deeds is to be liberal, agreeing as much with the intention of the parties as the law will permit; for *verba intentioni non è contra debent inservire*. *And. 60. Co. Lit. 313. 2 Blac. Com. 379.* This maxim may seem to blend itself with and infringe upon that before noticed relative to the *enurement* of deeds (rule 4.) but (as I collect from the ancient and more modern cases) it is rather, like that rule, to be considered as an exception to the preceding rule 3. applying however, not as that rule, to the *enurement* of deeds considered in the *gross*, but as applying to any particular deed, or part of a deed, as dependent upon and governed by the *circumstances* to which it relates. Thus (in the case put by the *Touchstone*, p. 86.) if there be lord and tenant, and the tenant grant the tenements to one man for the term of his life, with remainder to another in fee, and the lord grant the services to the tenant for life in fee, in this case, though a grant may enure by way of release, and a release to the tenant for life shall, according to the known rules of law, enure to him in remainder, and will consequently be an extinguishment, yet because this would be contrary to the intention of the

parties, it shall be taken for a suspension only of the services during the life of the tenant for life, which shall afterwards go to his heir; but it is to be observed that this rule is still controuled by the standing rules of law, which shall in no case (by reason of the great and unknown inconvenience which might result from so great a latitude of construction) give way to the rude and frequently ambiguous intentions of parties. We are here, however, it is to be recollected, speaking of *deeds* only, and not of *wills*, which we shall afterwards see to be more favourably construed.

2. That therefore too much stress is not to be laid upon the grammatical and proper import of words or sentences, so as to pervert the real meaning of the parties, for *mala grammatica not vitiat chartam*; on this principle it is held (contrary to the voice of a grammarian) that two negatives do *not* make an affirmative, unless such be the apparent intention. See *Plow.* 134. 154. 170. *3 Atk.* 136.

3. The construction of deeds shall be "reasonable, and according to an indifferent and equal understanding." *Touch.* 86. As if I grant to another free commonage in all my manor, it shall be intended of *commonable places* only, not of my garden or orchard. *Ibid.*

4. A fourth rule is that *construction*, when

necessary to be had recourse to, must be made upon the entire deed and not upon *disjointed parts* of it, as one part may help to expound another, and *ex antecedentibus & consequentibus est optima interpretatio.*

5. And further, that the whole and *every part* of the deed may take effect, so that though it cannot take effect according to the letter, it may yet be construed so as to take some effect or other. *Finch. 60. Plow. 154. 160. 1 P. Wms. 457.*

6. A sixth rule, according to the *Touchstone*, is that the words of a deed are to be taken most against the grantor and more for the advantage of the other party (p. 87.) "but here," Mr. Justice *Blackstone* observes, "a distinction is to be taken between an indenture and deed poll; for the words of an indenture executed by both parties are to be construed as the words of them both, but in a deed poll executed only by the grantor, they are the words of the grantor only, and shall be taken most strongly against him, and in general this rule, being a rule of some strictness and rigour, is the last to be resorted to, and is never to be relied upon but when all other rules of exposition fail." *2 Com. 380. also Bac. El. r. 3. Plow. 134. and see a further distinction, post. rule 8.*

7. If different parts of a deed are contradictory and repugnant to each other, the first shall be received and the latter rejected, unless there be some special reason to the contrary; and in this it is said (*Touch. 88. Hard. 94. Co. Lit. 112. Plow. 541. 2 Blac. Com. 381.*) a deed differs from a will, wherein if there be repugnant clauses, the *last* shall stand and the *first* be rejected; but this distinction, according to later authorities, is to be adopted with much restriction, and the better opinion seems to be that where a devise is made to two different persons, they shall take in moities. See 3 *Aik. 493. Co. Lit. 112. b. n. (1).*

8. If words used in a deed have a double import, and the one would render the deed conformable to law and the other contrary, they shall be taken in that sense which is agreeable to law. *Co. Lit. 42. b.* Thus if a tenant in tail make a lease for life generally, without expressing for whose life, it shall be construed to be intended for the life of the *lessor* and not for the life of the lessee, which would be contrary to law, and incur a forfeiture.

9. Lastly, in a *devise*, which is now considered in many respects as a conveyance, the construction is to be abundantly liberal, so that the intention of the testator

may if possible be observed, "who for want of advice or learning, may have omitted the proper phrases." 2 *Blac. Com.* 381. And agreeably to this rule, a fee is allowed to pass under a devise without words of inhefurance, which are absolutely necessary to create a fee by deed, and so of other cases. See *Ib.* 381. 1 *Vent.* 376. and the celebrated case of *Perrin v. Blake.* 1 *Blac. Rep.* 672. 4 *Bur.* 2579. *Doug.* 322.

Further remarks and illustrations relative to the rules of construction in respect of deeds and wills, the reader will find collected in *Finch.* 58. *Shep. Touch.* 86. *Plow.* 160. *Lil. Conv.* 152. and 1 *Forb. Eq.* c. vi.

III. Besides the rules which we have just noticed in respect to the enurement and construction of deeds, there are others which relate more particularly to the things granted, of these the principal is the following:

When any thing is granted by deed, it is an incidental and legal consequence that every thing necessary for the attainment of the thing granted, together with whatever may appertain thereto, will pass with it, without any express words, comprehending such collateral objects; thus the grant of a piece of ground includes the grant of a way to it; the

grant of trees, a power and liberty to cut them down and carry them away. 11 Co. 52. ^a And so by the grant of a mill; waters, flood-gates, and other things of necessary use thereto will likewise pass; by the grant of a reversion of lands the rent will pass as being incident thereto; by the grant of arable lands, commons appendant pass, &c. &c. of which see more, *Co. Lit.* 307. *Shep. Touch.* 89.

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